(1)

Supreme Court, U.S.
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No. 03 145

IN THE
In the Supreme Court of the United States

DON HAMRICK, U.S. MERCHANT SEAMAN
5860 Wilburn Road
Wilburn, AR 72179

PETITIONER

v.

PRESIDENT GEORGE W. BUSH
White House, Washington, DC 20500

REP. FRANK A. LOBIONDO, CHAIRMAN
House Subcom. on UCSG & Maritime Transportation

THOMAS RIDGE, SECRETARY
Department of Homeland Security, Washington, DC

ADM. THOMAS H. COLLINS
Commandant (G-C), USCG, Washington, DC

CAPT. J. P. BRUSSEAU, DIRECTOR
Field Activities, Marine Safety, Security & Env.P.
Commandant (G-MO), USCG, Washington, DC

RESPONDENTS

On Petition For Writ of Certiorari To The U.S. Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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95 pp

QUESTIONS PRESENTED FOR REVIEW

A. THE U.S. MERCHANT SEAMAN & THE SECOND AMENDMENT

Whether the U.S. Coast Guard is required by law, by the Second Amendment to the U.S. Constitution, and by official policy of the President on the Second Amendment to endorse a Merchant Mariner's Document with "National Open Carry Handgun," whether or not a U.S. Able Seaman presents a certificate of course completion for a firearms recertification course for the 9mm handgun, the 12-ga. Shotgun and the M14 rifle when that training is required of an Able Seaman aboard a U.S. merchant vessel in accordance with 46 U.S.C. § 7306(a)(3).

Whether the act of National Open Carry Handgun in interstate and intrastate travel in addition to Petitioner's application to the Coast Guard for the National Open Carry Handgun endorsement on his Merchant Mariner's Document is "*A right vested in a citizen means that he has the power to do certain actions, or to possess certain things, according to the law of the land.*" *Calder* v. *Bull*, 3 Dall 386, 1 L.Ed. 648.

Whether the right to openly keep and bear arms for the purpose of personal security and armed self-defense in interstate and intrastate travel to and from U.S. merchant vessels in the United States is "*Among the historic liberties protected by the due process clauses of the Fifth and Fourteenth Amendments is the right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security.*" *Ingraham* v. *Wright*, 430 US 651, 97 S.Ct. 1401, 51 L.Ed.2d. 711.

Whether the United States is obligated to establish an armed U.S. Merchant Marine Auxiliary as a means toward restoring the balance of powers between the

People, the States, and the Federal government under the Tenth Amendment in accordance with 3 U.S.C. § 301; 2 U.S.C. § 275, 2 U.S.C. § 281a, 2 U.S.C. § 281b, 2 U.S.C. § 285b; 14 U.S.C. § 2, 93(a); 32 U.S.C. § 109; 46 U.S.C. § 1295 *et seq*; 49 U.S.C. § 301(1), 49 U.S.C. § 351; under the authority of the militia clause of the Second Amendment to the U.S. Constitution, to serve as:

(1) both an organized and unorganized naval militia under 10 U.S.C. § 311(b)(1) and 10 U.S.C. § 311(b)(2) respectively,

(2) a State Defense Force under 32 U.S.C. § 109 *et seq*,

(3) an organization to assist when called upon by civilian law enforcement under the Posse Comitatus Act in accordance with 18 U.S.C. § 1385 and 42 U.S.C. § 1989.

B. INTERNATIONAL TREATIES & CONVENTIONS

Whether treaties with or conventions of the U.N. Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects and the Programme of Action resulting thereof in conjunction with the U.N. Department of Disarmament Affairs' *Disarmament Agenda for the 21st Century* (DDA Occasional Papers No. 6, October 2002) and in conjunction with the U.N.'s International Maritime Organization's Maritime Safety Committee's *Piracy and Armed Robbery Against Ships: Guidance to Shipowners and Ship Operators on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships* (MSC/Circ.623/Rev.3 dated May 29, 2002)'s anti-gun recommendations in paragraphs 45 and 46 can rule supreme over, even though repugnant to, the United States Constitution and its Second Amendment threatening to deny U.S. merchant seamen

their Second Amendment right keep and bear arms in the United States.

C. THE DOCTRINE OF UNCONSTITUTIONAL CONDITIONS

Whether the Doctrine of Unconstitutional Conditions ought to be applied to every law directly and indirectly affecting the Second, Ninth, Tenth, Thirteenth and Fourteenth Amendments to the U.S. Constitution for the purpose of restoring Second Amendment rights.

Whether the Department of Homeland Security was unconstitutionally established to the Pecple's detriment in providing for their own personal security violating the People's undelegated powers under the Tenth Amendment to the United States Constitution.

Whether the Federal government is violating the U.S. Constitution of its guaranteed Republican form of government in failing to protect the States from Invasions and domestic violence as stipulated in Article IV, Section 4 of the United States Constitution by prohibiting the People through gun control laws from providing for their own personal security. *"There is no constitutional right to be protected by the state (or Federal) against being murdered by criminals or madmen. It is monstrous if the state fails to protect its residents against such predators but it does not violate the due process clause of the Fourteenth Amendment, or, we suppose, any other provision of the Constitution. The Constitution is a charter of negative liberties: it tells the state (gov't) to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order"* (*Bowers* v. *DeVito*, U.S. Court of Appeals, Seventh Circuit, 686 F.2d 616 [1982]).

D. THE CHECKS & BALANCE SYSTEM OF GOVERNMENT

Whether the Preamble to the Constitution and the Preamble to the Bill of Rights have any deterrent effect to the government's propensities to infringe and violate the People's constitutional rights under the Bill of Rights and under the United States Constitution against a growing tyrannical government.

Whether the Thirteenth Amendment, separately or jointly with the Second, Fifth, Ninth, and Tenth and Fourteenth Amendments serve as a barrier to firearms laws enacted through the commerce clause or by any other means.

Whether there exists any remnants of a checks and balance system in our guaranteed Republican form of government in view of (1) the repeal of the Civil Defense in 1994; (2) the anti-militia laws of approximately half the states; (3) the total number of State and Federal firearms laws; (4) the weakened state of the Posse Comitatus Act; (5) the recently enacted laws (i.e., the USA Patriot Act) in the war on terrorism; (6) the creation of the Department of Homeland Security and its attack on civil liberties; (7) the sovereign and qualified immunities with the exceptions to torts and constitutional torts of the Federal Tort Claims Act under 28 U.S.C. § 2680 where the aggregate effect of all these conditions ushers in an imbalance of power excessively favoring the Federal government invoking the Doctrine of Unconstitutional Conditions.

Whether the Petitioner has a right to challenge the constitutionality of any law or statute that directly or indirectly infringes upon his right to National Open Carry Handgun under the Second, Fifth, Ninth, Tenth, Thirteenth and Fourteenth Amendments.

E. THE BILL OF RIGHTS

Whether the Bill of Rights are designed where one amendment supports another or several others, or whether all of the amendments can be woven together to support all of the other amendments protecting a given right, i.e., National Open Carry Handgun.

F. SECOND AMENDMENT FREEDOMS

Whether the constitutional right to travel the various states and the constitutional right to armed personal security are intended to be exercised together and whether State and Federal firearms laws unconstitutionally infringe upon that right, not only for the U.S. Merchant Seaman, but for all U.S. citizens.

Whether the Second Amendment is an absolute individual right. And whether the Second Amendment incorporates an absolute right to "National Open Carry Handgun" for the purpose of personal security as well as for the security of a free state.

G. SLAVERY AND INVOLUNTARY SERVITUDE

Whether the "aggregate effect" of anti-militia laws of approximately half the States criminalizing militia groups, militia and paramilitary activities, and the total number of State and Federal firearms laws impose upon the People of this nation conditions of slavery and involuntary servitude to the State and Federal governments as defined by the *Dred Scott* v. *Sanford* definition of a free citizen and a slave.

Whether the Thirteenth Amendment is also a right to keep and bear arms amendment to preserve one's own life and freedom from slavery and involuntary servitude to the common criminal, foreign and domestic enemies (and terrorists), and even a growing tyrannical government.

Whether the Ninth, Tenth, and Thirteenth Amendments rights to personal security through National Open Carry Handgun provides protections against any criminal or terrorist in armed self defense, or even against rogue government agents and agencies committing violent crimes under the shield of qualified and sovereign immunities.

H. JUDICIAL & CONGRESSIONAL INSURRECTION

Whether Petitioner's presentment of a Presumption of an insurrection in the U.S. Congress and the Federal judicial system under Rule 301 on Evidence of Habit or Routine Practice under Rule 406, subject to Judicial Notice of Adjudicative Facts under Rule 201, of the Federal Rules of Evidence, the Militia clause to suppress insurrections of Article I, Section 8 of the U.S. Constitution compels Presidential action to suppress the insurrection in the U.S. Congress and in the Federal judicial system against the Second Amendment, the Bill of Rights, and the Thirteenth and Fourteenth Amendments.

Whether the crime of rebellion or insurrection (18 U.S.C. § 2383) exists in the District of Columbia and whether the laws to suppress insurrections, i.e., Suspension of commercial intercourse with State in insurrection (50 U.S.C. § 205); Suspension of commercial intercourse with part of State in insurrection (50 U.S.C. § 206); Federal aid for state governments (10 U.S.C. § 331); Use of militia and armed forces to enforce Federal authority (i.e., the U.S. Constitution)(10 U.S.C. § 332); Interference with State and Federal law. (10 U.S.C. § 333); Proclamation to disperse (10 U.S.C. § 334) can be applied against the District of Columbia and the federal government contained therein under the Powers Reserved to the People under the Tenth Amendment.

All questions presented herein were originally raised in the original Petition for Writ of Mandamus, et al, and motions supporting the Writ, and were reiterated and/or expanded in Appellant's Brief and motions supporting Appellant's Brief.

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OPINIONS BELOW

The administrative Final Agency Action denial issued from Captain J. P. Brusseau, USCG, Director of Field Activities, Marine Safety, Security and Environmental Protection of Commandant (G-MO), U.S. Coast Guard Headquarters in Washington, DC. That Final Agency Action denial was issued by letter, dated April 19, 2002 to Petitioner. The body of that letter is included, in its entirety, herein:

Dear Mr. Hamrick:

This is to address your appeal of a decision by the Commanding Officer, Coast Guard National Maritime Center concerning your Merchant Mariner's Document. In your letter of 19 January 2002, you applied to have your Merchant Mariner's Document endorsed "National Open Carry Handgun." The Commanding Officer, Coast Guard National Maritime Center replied to you in his letter of 22 February, denying your application. You appealed that decision in your letter of 16 March to Secretary of Transportation Norman Y. Mineta, and supplemented your appeal with your letter of 29 March, also to Secretary Mineta. Your appeal was forwarded to me for final agency action as outlined in 46 CFR 1.03-15(j).

I am impressed with your scholarship and zeal in formulating arguments in support of your application for a "National Open Carry Handgun" endorsement on your Merchant Mariner's Document, but I am not persuaded to agree with you. As you have noted, the laws and regulations do not provide for such an endorsement nor do they prohibit it. Instead, the matter is left to my

judgment. My decision, after considering all the material you have submitted, is that it would not be in the best interest of marine safety or security to initiate the endorsement you have applied for. Your appeal is therefore denied and the Commanding Officer, National Maritime Center is directed not to place any endorsements regarding firearms on any merchant mariner's licenses or documents.

This decision constitutes final agency action as cited above.

The opinion for which review is sought is the opinion of the United States District Court for the District of Columbia Circuit in *Don Hamrick, U.S. Merchant Seaman* v. *President George W. Bush, et al.*, Case No. 02-01435(ESH), Petition for Writ of Mandamus, Writ of Prohibition, Declaratory Judgment, and Injunctive Relief, denied with prejudice by Memorandum of Judge Ellen Segal Huvelle. In that Memorandum Judge Huvelle wrote, in part, "*. . . no court has ever so much as suggested that the Thirteenth Amendment confers any right to bear arms, and it is entirely fanciful to suggest that its prohibition of involuntary servitude somehow unambiguously requires the overturning of a whole variety of gun control legislation.*"

Petitioner contends that the Thirteenth Amendment does exactly that. How else are the People to remain forcibly free from slavery or involuntary servitude but by the use of arms? The Second Amendment gives us the right to be armed for the security of a free state. The Thirteenth Amendment gives us the right to be armed for the security of a free citizen.

The Thirteenth Amendment does, indeed, serve as a right to keep and bear arms!

Petitioner appealed the case to the U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 02-5334 where it is now pending, from which this Petition for Writ of Certiorari issues under Rule 11 of the Rules of the Supreme Court.

JURISDICTION

The date of the U.S. District Court for the District of Columbia's dismissal with prejudice of the Petition for Writ of Mandamus, et al, was October 10, 2002.

This Petition for Writ of Certiorari to the U.S. Supreme Court from the U.S. Court of Appeals for the District of Columbia Circuit is filed in accordance with Rule 11 of the Rules of the Supreme Court of the United States.

Jurisdiction of this Court is invoked under Title 28, U. S. Code § 1254(1).

In accordance with Rule 29.4(a) service has been performed on the Solicitor General of the United States via prepaid Priority Mail.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

Federalist Papers, No. 26: The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered

Federalist Papers, No. 29: Concerning the Militia

Federalist Papers, No. 46: The Influence of the State and Federal Governments Compared

Federalist Papers, No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments

Federalist Papers, No. 78: The Judiciary Department

STATEMENT OF THE CASE

A. THE U.S. MERCHANT SEAMAN & THE SECOND AMENDMENT

The U.S. Coast Guard is required by law, (46 U.S.C. § 7301(b), 7302, 7303, 7306(a)(3), 46 U.S.C. Appendix § 1295), and by the Second Amendment to the U.S. Constitution as an individual right to endorse a Merchant Mariner's Document with "National Open Carry Handgun" when a U.S. Able Seaman presents a certificate of course completion for a firearms recertification course for the 9mm handgun, the 12-ga. Shotgun and the M14 rifle when that training is a requirement of an Able Seaman aboard a U.S. merchant vessel in accordance with 46 U.S.C. § 7306(a)(3). The Coast Guard does not have the authority to deny an application for an endorsement for National Open Carry Handgun presenting "applicable examination" and "educational requirement" when the Able Seaman is not a prohibited person from possessing firearms under 18 U.S.C. § 922 *et seq* simply because of omissions in Coast Guard regulations. Nor does the Coast Guard have the authority to deny such an application where the United States Constitution's Second Amendment, the Bill of Rights, the Thirteenth and Fourteenth Amendments or Abraham Lincoln's Emancipation Proclamation directly apply. The Thirteenth Amendment is just as much an individual right to keep and bear arms as is the Second Amendment but for a different purpose, even for U.S. Merchant Seamen not employed aboard ship, but living ashore in the United States.

See Appendix F where the Coast Guard suspiciously omits 46 U.S.C. § 7306(a)(3) from its list of Authorities.

One of the general requirements and classifications for able seaman is "*qualified professionally as*

demonstrated by an applicable examination or educational requirement" as per 46 U.S.C. 7306(a)(3). The naval document stipulating the requirements for small arms training is OPNAVINST 3591.1C, "*Small Arms Training and Qualification*" qualifying it as applicable examination or educational requirement. The Secretary of Transportation [or the Department of Homeland Security, as the case may be] may prescribe regulations to carry out this chapter as per 46 U.S.C. 7301(b). However, Petitioner questions that when the Coast Guard is transferred to the Department of Homeland Security on March 1, 2003 will the Secretary of Homeland Security prescribe regulations to carry out the same function for firearms training for Able Seaman?

Nothing in the laws cited above positively or even remotely, prohibits the U.S. Coast Guard from endorsing Merchant Mariner's Documents with *National Open Carry Handgun*.

> "*New opinions are always suspected, and usually opposed, without any other reason but because they are not already common.*"[1] John Locke, 1690.

B. THE SEAMAN'S SUIT LAW OF 28 U.S.C. § 1916

The exemption from "*prepaying fees or costs or furnishing security therefor*" of 28 U.S.C. § 1916 is a statutory right given to Merchant Seamen because they are Merchant Seamen.

Under the Doctrine of Unconstitutional Conditions the federal courts are prohibited from attaching

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[1] An Essay concerning Human Understanding (1690), dedicatory epistle.

conditions of indigency requiring Merchant Seamen to file *in forma pauperis*. See Appendixes E, C and D.

B. U.S. POLICY: SECOND AMENDMENT IS AN INDIVIDUAL RIGHT

The current official policy of the United States government on the Second Amendment is contained in Footnote 3 to the U.S. Supreme Court Brief on May 7, 2002, for the United States in Opposition to *Timothy Joe Emerson* v. *United States* on Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, No. 01-8780; Theodore B. Olson, Solicitor General and Council of Record.

That portion of Footnote 3 reads:

> *The current position of the United States, however, is that the Second Amendment more broadly protects the rights of individuals, including persons who are not members of any militia or engaged in active military service or training, to possess and bear their own firearms, subject to reasonable restrictions designed to prevent possession by unfit persons or to restrict the possession of types of firearms that are particularly suited to criminal misuse. See Memorandum From the Attorney General To All United States Attorneys, Re: United States v. Emerson, Nov. 9, 2001. A copy of that memorandum is appended to this brief.*

The new official United States policy on the Second Amendment as being an individual right is so fundamental to the Rule of Law as to mandate a legislative and judicial review of all firearms laws in existence as to the fact that either all, most, or some of the firearms laws were enacted either on the assumption the Second Amendment was a collective

right of the state or a confused mixture of the collective and individual rights assumptive view. The new policy on the Second Amendment unequivocally impeaches all firearms laws for constitutionality given the legislative history of collective rights advocates in Congress misconstructing and misconstruing the Second Amendment in violation of the Preamble to the Bill of Rights, and other portions of the U.S. Constitution at the passage of said firearms laws. Attorney General John Ashcroft opened the door to a civil rights challenge on the constitutionality of all existing federal firearms laws when he stated in the above Memorandum, *"The Department can and will continue to defend vigorously the constitutionality, under the Second Amendment, of all existing federal firearms laws."* Petitioner has initiated that civil rights challenge in the case now pending before the Court of Appeals for the District of Columbia Circuit and now before the U.S. Supreme Court in this Petition for Writ of Certiorari.

C. THE RIGHT TO CHALLENGE STATUTES (CASE LAW)

A statute valid when enacted may become invalid by change in the conditions to which it is applied. *Nashville, C. & St. L. R. Co.* v. *Walters*, 294 US 405 (1935), 55 S Ct 486, 79 L Ed 949. Longevity does not ensure that a statute is constitutional. [Per Marshall, J., as Circuit Justice.] *Brennan* v. *U.S. Postal Service*, 439 US 1345 (1978), 98 S Ct 22, 58 L Ed 2d 51. The principle that a statute, valid, when enacted may cease to have validity, owing to a change of circumstances, is applicable to Acts of Congress. *Hamilton* v. *Kentucky Distilleries & Warehouse Co.* 251 US 146 (1919), 40 S Ct 106, 64 L Ed 194. When the United States Supreme Court is asked to invalidate a statutory provision that has been approved by both houses of Congress and signed by the President, it should do so only for the most

compelling constitutional reasons. *Mistretta* v. *United States*, 488 US 361 (1989), 109 S Ct 647, 102 L Ed 2d 714.

D. THE PREAMBLE TO THE CONSTITUTION

We the People of the United States, in Order to form a more perfect Union, establish Justice, **insure domestic Tranquility**, **provide for the common defence**, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

PURPOSE AND EFFECT OF THE PREAMBLE[2]

> Although the preamble is not a source of power for any department of the Federal Government,[3] the Supreme Court has often referred to it as evidence of the origin, scope, and purpose of the Constitution.[4] "Its true office," wrote Joseph Story in his COMMENTARIES, "is to expound the nature and extent and

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[2] U.S. Senate, *The Constitution of the United States of America: Analysis and Interpretation: Annotations of Cases Decided By the Supreme Court of the United States to June 29, 1992*; Senate Document No. 103-6; 103d Congress, 1st Session, p. 53.

[3] *Jacobson* v. *Massachusetts*, 197 U.S. 11, 22 (1905).

[4] E.g., the Court has read the preamble as bearing witness to the fact that the Constitution emanated from the people and was not the act of sovereign and independent States, *McCulloch* v. *Maryland*, 4 Wheat. (17 U.S.) 316, 403 (1819) *Chisholm* v. *Georgia*, 2 Dall. (2 U.S.) 419, 471 (1793); *Martin* v. *Hunter's Lessee*, 1 Wheat. (14 U.S.) 304, 324 (1816), and that it was made for, and is binding only in, the United States of America. *Downes* v. *Bidwell*, 182 U.S. 244, 251 (1901); *In re Ross*, 140 U.S. 453, 464 (1891).

> application of the powers actually conferred by the Constitution, and not substantively to create them. For example, the preamble declares one object to be, 'to provide for the common defense.' No one can doubt that this does not enlarge the powers of Congress to pass any measures which they deem useful for the common defence. **But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is, and ought to be, governed by the intent of the power; if one could promote and the other defeat the common defence, ought not the former, upon the soundest principles of interpretation, to be adopted?**"[5]

The question of whether the aggregate effect of State and Federal laws have directly or indirectly served to defeat the common defense is the focal point of Petitioner's case for his constitutional right to keep and bear arms. The invasion of terrorists and their successful attacks of September 11, 2001 is prima facie evidence of a breach of contract for the common defense. Petitioner alleges that there is enough evidence proving that the aggregate effect of State and Federal laws, (not limited to just firearms laws), since the National Firearms Act of 1934 have served to defeat the ***common***

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[5] 1 J. Story, *Commentaries on the Constitution of the United States* (Boston: 1833), 462. For a lengthy exegesis of the preamble phrase by phrase, see M. Adler & W. Gorman, *The American Testament* (New York: 1975), 63–118.

defense. Given the evidentiary proof of such an allegation that since it is clearly apparent that our national government has taken the wrong path from that "*fork in the road*" of constitutional law and legislation as Justice Story comments above, by oppressively restricting our Second Amendment rights, Petitioner exercises his right to challenge the laws for constitutionality in favor of the other path from that "*fork in the road*" to the restoration of Second Amendment rights to full National Open Carry Handgun.

E. THE PREAMBLE TO THE BILL OF RIGHTS

> Congress of the United States[6]
>
> Begun and held at the City of New-York, on Wednesday, March 4, 1789
>
> THE Conventions of a number of States, having at the time of their adopting the Constitution, **expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution**.[7]
>
> RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses

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[6] The National Archives:

http://archives.gov/exhibit_hall/charters_of_freedom/bill_of_rights/preamble.html

[7] Emphasis is Petitioner's.

> concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.
>
> ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Petitioner asserts the claim that the collective effect of the Preamble to the Bill of Rights, the Preamble to the Constitution; the *shall not be infringed* clause of the Second Amendment, the Ninth, Tenth, Thirteenth and Fourteenth Amendments; the Full Faith and Credit Clause and the Privileges and Immunities Clause of Article IV; the delegation of the President being the Commander in Chief of the Militia of the several States in Section 2, Article II, the clause in Section 4, Article IV stating, *"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence"* of , **all serve as a barrier to federal firearms laws through the Commerce Clause of Section 8, Article I of the U.S. Constitution and prohibitions the States from enacting laws through the same barriers through the Fourteenth Amendment**.

> *"Patriotism means to stand by the country. It does not mean to stand by the president or any other public official, save exactly to the degree in*

which he himself stands by the country. It is patriotic to support him insofar as he efficiently serves the country. It is unpatriotic not to oppose him to the exact extent that by inefficiency or otherwise he fails in his duty to stand by the country. In either event, it is unpatriotic not to tell the truth, whether about the president or anyone else."

Theodore Roosevelt

F. THE FIRST CONGRESS: THE DEBATES ON THE MILITIA

The First Congress held extensive debates on the purpose and function of the militia. In December 1790 the House of Representatives "resolved itself into a Committee of the Whole on the bill to establish a uniform militia throughout the United States." From that debate:[8]

> Mr. Jackson said, that he was of opinion that the people of America would never consent to be deprived of the privilege of carrying arms. Though it may prove burdensome to some individuals to be obliged to arm themselves, yet it would not be so considered when the advantages were justly estimated. Original institutions of this nature are highly important. The Swiss Cantons owed their emancipation to their militia establishment. The English cities rendered themselves formidable to the Barons, by putting arms into the hands of their militia; and when the militia united with the Barons, they

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[8]*Annals of The Congress of the United States; First Congress*, December 1790; p. 1806. (National Archives, Washington, DC)

> extorted the *Magna Charta* from King John. In France, we recently see the same salutary effects from arming the militia. In England, the militia has of late been neglected—the consequence is a standing army. In Ireland, we have seen the good effects of arming the militia, in the noble efforts they have made to emancipate their country. If we neglect the militia a standing army must be introduced; . . . In a Republic every man ought to be a soldier, and be prepared to resist tyranny and usurpation, as well as invasion, and to prevent the greatest of all evils—a standing army. Mankind have been divided into three classes: shepherds, husbandmen, and artificers[9] —of which the last make the worst militia; but as the arts and sciences are sources of great wealth to the community, which may excite the jealousy and avarice of neighbors, this class ought to be peculiarly qualified to defend themselves and repel invasions; and as this country is rising fast in manufactures, the arts and sciences, and from her fertile soil may expect great affluence, she ought to be able to protect that and her liberties from within herself.

From General Knox's Militia Plan (Annals of The Congress of the United States; First Congress, December 1790; p. 2090. (National Archives, Washington, DC) of January 18, 1790 he takes into account that the human character never changes and that the need to be perpetually on guard (armed citizens implied) always exists.

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[9] As used in this context the definition of artificer, though now obsolete, is a cunning or artful fellow (these base and illiterate artificers Robert Burton).

> An energetic national militia is to be regarded as the capital security of a free Republic; and not a standing army, forming a distinct class in the community.
>
> It is the introduction and diffusion of vice and corruption of manners into the mass of the people that render a standing army necessary. It is when public spirit is despised, and avarice, indolence, and effeminacy of manners predominate, and prevent the establishment of institutions which would elevate the minds of the youth in the paths of virtue and honor, that a standing army is formed and riveted forever.
>
> While the human character remains unchanged, and societies and governments of considerable extent are formed, a principle ever ready to execute the laws and defend the State must constantly exist. Without this vital principle, the Government would be invaded or overturned, and trampled upon by the bold and ambitious. No arrangements are adequate to its probable exigencies.
>
> If it should be decided to reject a standing army for the military branch of the Government of the United States, as possessing too fierce an aspect and being hostile to the principles of liberty, it will follow that a well constituted militia ought to be established.

G. Proposing an armed U.S. Merchant Marine Auxiliary & With its own Flag

It is Petitioner's discovered truth that all State and Federal firearms laws that have been enacted since the National Firearms Act of 1934 to the present day have failed to give us the safe and secure society that such

laws were misguidedly meant to provide. Society today would not now be a gravely dangerous society had Congress and the State legislatures minded their own affairs under the U.S. Constitution and not stole from We, the People our undelegated powers under the Tenth Amendment to resist those who aim to enslave, kill, maim, injure or otherwise reduce us to a far less than perfect Union.

Restoring freedom in America under the present circumstances demands the restoration of the Second Amendment right of unlicensed open carry of a handgun.

The State and Federal governments have no right nor duty to know who owns or possesses firearms for their namesake. Under our United States Constitution the original intent was that every law-abiding citizen was intended the right to own and possess firearms, i.e. a handgun strapped on as a sidearm. It was left to society to develop social norms and customs in respect to proper conduct and behavior in possession of firearms aided by State government laws supporting such rights, social norms and customs.

We, the People of the U.S. Constitution never delegated our Tenth Amendment powers to the State or the Federal government to legislatively disarm us in interstate or intrastate travel through the Commerce Clause. Franklin Delano Roosevelt's Court Packing Plan was an act of coercion against the U.S. Supreme Court to unconstitutionally expand the federal powers of government. That unconstitutional expansion continues today with the new Department of Homeland Security. Such a reorganization or expansion of the federal government was done to the detriment of the People's rights under the Preamble to the U.S. Constitution, and the Preamble to the Bill of Rights, the right to

participant in the common defense for domestic tranquility, in defense of our own personal lives, our counties, our States and our nation by the continued disarmament by State and Federal firearms laws, and by extension of the treaty clause, by United Nations treaties and international conventions of subordinate United Nations organizations.

Petitioner seeks to restore the proper checks and balance system of our guaranteed Republican form of government with his Petition for Writ of Mandamus, Writ of Prohibition, Declaratory Judgment, and Injunctive Relief now at the U.S. Court of Appeals for the District of Columbia Circuit to compel President George W. Bush to order the Coast Guard to endorse his Merchant Mariner's Document with the "National Open Carry Handgun" endorsement as requested.

Coast Guard Auxiliary members are prohibited from possessing or bearing arms. The Commandant (G-LAL) Memo 16790 dated March 7, 1983, CGLB No. 433 states that 14 U.S.C.S. §§ 822 and 831 do not permit tasking Coast Guard auxiliarists with wartime missions such as securing of port facilities and other guard or picket duties for which carriage of sidearms would be necessary. This is a rectifiable error of policy. The proposed Merchant Marine Auxiliary shall be armed.

Appellant's proposal to President Bush, to the Maritime Administration, to the U.S. Congress and to the U.S. Coast Guard for a Merchant Marine Auxiliary is a sound proposal based on current federal law and answers the very serious question of "*What Do You Do With an Armed Sailor Early In The Mornin'* "

See Appendixes G and H for the excerpts from Petitioner's Merchant Marine Auxiliary Manual and the proposed Model Law for the Merchant Marine Auxiliary.

H. On International Treaties & Conventions

Page 9 of *Piracy and Armed Robbery Against Ships: Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships*, MSC/Circ.623/Rev.2, Dated 20 June 2001 is found the following:

> **Firearms:**
>
> 45 The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged.
>
> 46 Carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. The use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he has acted in self defence.

That IMO Maritime Safety Committee guidance was revised by MSC/Circ.623/Rev.3, dated 29 May 2002. Paragraphs 45 and 46 of the Firearms section remains unchanged. For the IMO Maritime Safety Committee to say that firearms requires special training and aptitudes and the risk of accidents with firearms carried on board is great in view that the working environment aboard ship at sea, at anchor, or docked is one of the most dangerous working environments of any industrial industry is an insult to seafarers the world over.

Citing from *Treaties*, Part IV, Relation To, And Conflict With, Other Laws, in 87 C.J.S. § 13: Generally:

> Without express authority from Congress, or authority otherwise clearly indicated, the courts are bound to recognize treaties as lawfully made.[10] However, the courts have the authority to declare the invalidity of a treaty in a proper case where the rights of citizens are involved.[11]

§ 14. Acts of Congress:

> Treaties and acts of Congress,[12] are placed on the same footing and are of like obligation,[13] so that neither having any inherent superiority over the other, either may supersede the other.[14] Even so, neither treaties nor laws passed pursuant to them are free from the restraints of the United States Constitution, such as the Bill of Rights.[15]

I. DEPT. OF HOMELAND SECURITY, THE COAST GUARD, AND THE MERCHANT MARINE

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[10]U.S. —In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evide. Serv. (LCP) 875 (9th Cir. 1982).

[11] U.S.—In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evide. Serv. (LCP) 875 (9th Cir. 1982).

[12] U.S.—Ribas y Hijo v. U.S., 194 U.S. 315, 24 S.Ct. 727, 48 L.Ed. 994 (1904).

[13] U.S.—Breard v. Greene, 523 U.S. 371, 118 S.Ct. 1352, 140 L.Ed. 2d 529 (1998).

[14]U.S.—Brandon v. S.S. Denton, 302 F.2d 404 (5th Cir. 1962).

[15] U.S.—U.S. v. Yian, 905 F. Supp. 160 (S.D.N.Y. 1995), aff'd, 134 F.3d 79 (2d Cir. 1998).

It is Petitioner's contention that the new official United States policy on the Second Amendment as an individual right to keep and bear arms is interpreted, in fact, as a delegated authority and direct order to the U.S. Coast Guard through the Department of Transportation (or the Department of Homeland Security after the March 1, 2003 transfer date) and as a mandate to the U.S. Congress to establish (1) an authorized endorsement for National Open Carry Handgun on Merchant Mariner's Documents (that such right while employed aboard vessels as a Merchant Seaman under the jurisdiction of the Coast Guard shall not be applicable to possession and carriage of personal or company owned firearms aboard the vessel unless it is at the discretion of the Master in defense of the vessel, crew and passengers, and the vessel's cargo as the circumstances dictate under maritime law); (2) to revitalize State Defense Forces (32 U.S.C. § 109) with a program for Coastal State Defense Forces of armed Merchant Seamen on volunteer or paid patrols to augment port security plans while not under the jurisdiction of the Coast Guard and maritime law but under the jurisdiction of the Department of Transportation (or the Department of Homeland Security after the March 1, 2003 transfer date); and (3) to review the constitutionality of all firearms laws in accordance with the following laws:

2 U.S.C. § 285a; 3 U.S.C. § 301; 14 U.S.C. § 2;
32 U.S.C. § 109; 46 U.S.C. Appendix § 1295;
49 U.S.C. § 301(1); 49 U.S.C. § 351;

See Appendix I for brief history of State Defense Forces.

Under this Educational Policy it would be constitutionally proper to provide training and education to merchant seamen in the handling,

marksmanship, and safety of firearms, which is already authorized and is presently offered and done for the purposes of security aboard vessels of the government civilian fleet. It is Petitioner's proposal that such training be extended to all Able Seaman for the purpose of personal security ashore and as an added measure for the national security of our nation's seaports.

J. GENERAL SUPERINTENDENCE OVER THE MERCHANT MARINE

At 1:49 P.M. on November 25, 2002 with the signature of President George W. Bush the Homeland Security Act of 2002 became law. On March 1, 2003 the U.S. Coast Guard was transferred from the Department of Transportation to the Department of Homeland Security in accordance with the Department of Homeland Security Reorganization Plan dated November 25, 2002.

In light of the transference of the U.S. Coast Guard Petitioner questions the efficacy of 49 U.S.C. § 2103, in that the Secretary of Transportation "*has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle. The Secretary may prescribe regulations to carry out the provisions of this subtitle.*"

The question is that if the general superintendence over the merchant marine of the United States and of merchant marine personnel is transferred to the Department of Homeland Security then what role will

the U.S. Merchant Marine play under the Department of Homeland Security.

Would it not then be logical that the circumstances necessitating the reorganization of the Federal government establishing the Department of Homeland Security also take into account the fighting force of the U.S. Merchant Marine personnel as a viable resource to augment security plans of our nations seaports to restore Second Amendment rights of not only the U.S. Merchant Marine personnel but also to law abiding citizens in order to maintain the balance of power between the People, the State, and the Federal government, that one part shall never gain an excessive advantage over the other?

Petitioner's case is for a Writ of Mandamus to President Bush directing the U.S. Coast Guard to endorse Petitioner's Merchant Mariner's Document with "National Open Carry Handgun." This endorsement would blend exceptionally well in a greater role for the Merchant Marine industry under the Department of Homeland Security as falling under the original meaning of the Preamble to the United States Constitution and the Preamble to the Bill of Rights supporting the right to keep and bear arms in interstate and intrastate commerce as well as for personal security of the individual U.S. citizen.

K. SLAVERY IS ALIVE & WELL IN THE UNITED STATES

"The Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom." Abraham Lincoln, Emancipation

Proclamation, January 1, 1863, freeing the Southern slaves.

Petitioner questions the constitutionality of State and Federal firearms laws that infringe, restrict, or prohibit the right to travel while openly armed under the Second Amendment for the purpose of personal security and the security of a free state as violating the Fifth, Ninth, Tenth, Thirteenth and Fourteenth Amendments as establishing a form of legislated slavery and/or involuntary servitude as defined by the 1856 U.S. Supreme Court case in *Dred Scott* v. *Sanford*. The Supreme Court defined the difference between a slave and a free citizen, among the definitions was that a slave could not possess a firearm or travel the various states possessing a firearm. Current State and Federal firearms laws, in the strict legal sense, impose conditions of slavery and/or involuntary servitude to the State and Federal governments as well as to the criminals of society and now terrorists by prohibiting law-abiding citizens from traveling the various states while openly armed for personal security.

Petitioner excerpts from the congressional transcript of Rep. Henry Hyde as House Impeachment Manager, comments made on January 16, 1998 on the vote to impeach President Clinton. Extracted are only the comments concerning the Rule of Law as it applies to the cause now before the Supreme Court:

> America is an experiment never finished. It's a work in progress. And so that question has to be answered by each generation for itself just as we will have to answer whether this nation can long endure. . . .The rule of law is one of the great achievements of our civilization for the alternative to the rule of law is the rule of raw power. We here today are the heirs of 3,000 years

of history in which humanity slowly and painfully, and at great cost, evolved a form of politics in which law not brute force, is the arbiter of our public destinies.

We're the heirs of the Ten Commandments and the Mosaic law, moral code for a free people, who having been liberated from bondage, ***saw in law a means to avoid falling back into the habits of slaves***.[16] We're the heirs of Roman law, the first legal system which peoples of different cultures, languages, races and religions came to live together to form a political community. We're the heirs of the Magna Charta, by which the free men of England began to break the arbitrary and unchecked power of royal absolutism. We're the heirs of a long tradition of parliamentary development in which the rule of law gradually came to replace royal prerogative as the means for governing a society of free men and free women.

Yes, we're the heirs of 1776 and of an epic moment in human affairs when the founders of this republic pledged their lives, their fortunes and yes, their sacred honor to the defense of the rule of law. Now we're the heirs of a tragic civil war which vindicated the rule of law over the appetites of some for owning others. We're the heirs of the 20th century's great struggles against totalitarianism in which the rule of law was defended at immense cost against the worst tyrannies in human history.

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[16] Emphasis is Petitioner's.

> The rule of law is no pious aspiration from a civics textbook. ***The rule of law is what stands between us and the arbitrary exercise of power by the state. The rule of law is the safeguard of our liberties. The rule of law is what allows us to live our freedom in ways that honor the freedom of others while strengthening the common good***.[17]

It is Rep. Henry Hyde's eloquence that partially inspires this Federal civil rights challenge to impeach for constitutionality all anti-militia laws and all State and Federal firearms laws on grounds that their collective effect is the enslavement of a free People.

It is also Rep. Henry Hyde's turncoat dismissal of the U.S. Constitution that also inspires this Federal civil rights challenge. As Chairman of the International Relations Committee Rep. Henry Hyde, in response to Rep. Ron Paul's amendment to the proposed resolution on the use of force against Iraq to "declare war," said that declaring war is "anachronistic", it isn't done anymore..." Rep. Henry Hyde went on to say that the Constitution has been "overtaken by events, by time" and is "no longer relevant to a modern society."[18]

Rep. Henry Hyde rants about the Rule of Law and the goodness of the U.S. Constitution during the President Clinton's impeachment. But when a Republican President Bush is in office Rep. Henry Hyde throws the U.S. Constitution out the window! Petitioner alleges that Rep. Henry Hyde's conduct is an

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[17] Emphasis is Petitioner's.

[18] Excerpts from Rep. Ron Paul's, *The Constitution is No Longer Relevant.*

insurrection against the Constitution. See Appendix L for case law on insurrections.

Petitioner illustrates this point in the following lists of an apparent coordinated conspiracy to enslave the People by rendering them defenseless against the tyranny of a State government by criminalizing the militia clause of the Second Amendment in violation of the Fourteenth Amendment prohibiting the People from defending their county and their State in the name of freedom, by usurping their right and duty to suppress insurrections and repel invasions or to rise up in arms against their State or Federal government to suppress acts of government tyranny. See Appendix K for anti-militia laws of the 24 states.

> "A little neglect may breed mischief, . . . for want of a nail, the shoe was lost; for want of a shoe the horse was lost; and for want of a horse the rider was lost."
>
> Benjamin Franklin
>
> "I ask, sir, what is the militia? It is the whole people. To disarm the people is the best and most effectual way to enslave them."
>
> George Mason

This false sense of security mislead our nation to lower its guard by disarming its law-abiding citizens and de-emphasizing the need for an armed society as a social norm. See Appendix J for the repeal of the Civil Defense.

Appellant alleges that this massive nationwide disarmament is an insurrection against the Constitution of the United States regardless of whether the laws passed were in the U.S. Congress or the State

legislatures. Insurrection can spring up from any corner of our nation, even in our State and Federal judicial systems. Appellant further alleges that it is this insurrection against our constitutional right to armed personal security that lead to the disastrous breach of national security in the terrorist attacks of September 11, 2001. Our nation suffered an invasion of domestic enemies that our federal government failed to protects us against. That failure is a breach of contract law which Appellant demands a Marbury v. Madison Standard of Review to strike all firearms laws repugnant to the Constitution as null and void.

Rep. Ron Paul, commenting on his Second Amendment Protection Act of 2003 (H.R. 153), said:

> *Thomas Jefferson said, "The constitutions of most of our States assert that all power is inherent in the people; . . . that it is their right and duty to be at all times armed."* Jefferson, and all of the Founders, would be horrified by the proliferation of unconstitutional legislation which prevent law-abiding Americans from exercising their "right and duty," to keep and bear arms. I hope my colleagues will join me in upholding the Founders' vision a free society by cosponsoring the Second Amendment Restoration Act.

REASONS FOR GRANTING THE WRIT

Petitioner's is a Second Amendment case as a federal civil rights case for U.S. seamen's rights. The case has reached the U.S. Supreme Court under Rule 11 and under Compelling Reasons under Rule 10(a) of the Rules of the Supreme Court of the United States. The "compelling reasons" to grant the Petition for Writ of Certiorari are from an unprecedented double-Circuit split decisions on the Second Amendment that the

United States Court of Appeals for the Ninth Circuit in *Silveira*, et al v. *Lockyer*, No. 01-15098, (9th Cir. Dec. 5, 2002) has entered a decision on the Second Amendment that is opposite in meaning to the decision of the United States Court of Appeals for the Fifth Circuit in *United States* v. *Emerson*, No. 99-10331 (5th Cir. Oct. 16, 2001, Revised Oct. 18, 2001). The Ninth Circuit ruled that "the Second Amendment does not confer an individual right to own or possess arms." The Fifth Circuit ruled: "*We agree with the district court that the Second Amendment protects the right of individuals to privately keep and bear their own firearms that are suitable as individual, personal weapons and are not of the general kind or type excluded by Miller, regardless of whether the particular individual is then actually a member of a militia.*"

It is *now* under Rule 9(c) of the Federal Rules of Civil Procedure for Conditions Precedent in that not only did the Ninth Circuit create a *Circuit Split* on the Second Amendment with the Fifth Circuit but the Ninth Circuit is now a *Circuit Split* in and of itself. On February 18 the Ninth Circuit handed down an opinion in *Nordyke* v. *King*, 2003 WL 347009 (9th Cir. 2003).

> *Nordyke* sharply criticized the [*Silveira*] decision . . . which went into great detail in an attempt to refute *Emerson* and the individual rights view: "We feel that the *Silveira's* panel's exposition of the connecting interpretations of the Second Amendment was both unpersuasive and, even more importantly, unnecessary . . . There was simply no need for the *Silveira* panel's broad digression. . . . The *Silveira* panel's decision to re-examine the scope and purpose of the Second Amendment was improper. . . We ignore the *Silveira* panel's unnecessary historical

> disquisition as the dicta that is . . . ." In a special concurrence, Judge Gould wrote that *Hickman* was "wrongly decided," that the remarks in *Silveira* v. *Lockyer* about the 'collective rights' theory of the Second Amendment are not persuasive," and that the individual-rights view of *Emerson* should be adopted. Further, contrary to other Ninth Circuit precedent (*Fresno Rifle & Pistol Club* v. *Van de Kamp*), States cannot violate the Second Amendment, for "maintenance of an armed citizenry might be argued to be implicit in the concept of ordered liberty and protected by the Due Process Clause of the Fourteenth Amendment."[19]

The Ninth Circuit's double-Circuit Split with itself and with the Fifth Circuit resulted from the Supreme Court's 64-year[20] aversion to Second Amendment cases and must come to an end.

It cannot be overstated that Petitioner's case ***"is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court***. *See 28 U.S.C. § 2101(e)"* of Rule 11 that burdens and compels the Supreme Court to correct its own error of silence on the Second Amendment that Justice Thomas had speculated in the *Printz* case. Justice Thomas stated:

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[19] NRA Institute For Legislative Action. Updates and Alerts: *Ninth Circuit Disputes Silveira Decision, Judge Calls Second Amendment an Individual Rights.* Available Online at:

http://wwwnraila.org/LegislativeUpdate.asp?FormMode=Detail&ID=539

[20] Referring to the *United States* v. *Miller* case of 1939.

> *Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story was correct when he wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic."* 3 J. Story, *Commentaries* §1890, p. 746 (1833).[21]

That ***some future date*** is now!

Petitioner has not exhausted all of the available documentation asserting the fact that the Second Amendment right to keep to keep and bear arms is an individual right and that right has been unconstitutionally denied to the Petitioner not only by the U.S. Coast Guard, but also by the collective effect of State and Federal laws standing in repugnance to the United States Constitution effectively nullifying the Second Amendment for the purposes of traveling the United States while armed for the purpose of personal security.

In reiterating Joseph Story's commentary on the common defense clause of the Preamble to the Constitution, *"No one can doubt that this does not enlarge the powers of Congress to pass any measures which they deem useful for the common defence. But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is, and ought to be governed by the intent of the power; if one could promote and the other defeat the*

---

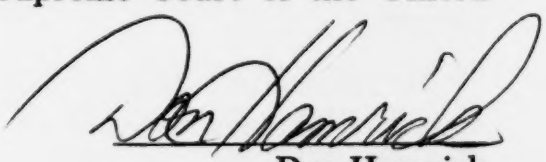
[21] *Printz* v. *United States* (95-1478), 521 U.S. 98 (1997). Nos. 95-1478 and 95-1503. *Jay Printz, Sheriff/Coroner, Ravalli County, Montana*, Petitioner 95-1478 v. *United States Richard Mack*, PETITIONER 95-1503

on writs of certiorari to the united states court of appeals for the ninth circuit [June 27, 1997] Justice Thomas, concurring.

common defence, ought not the former, upon the soundest principles of interpretation, to be adopted?[22]

Petitioner disagrees with *State Oil Co.* v. *Khan* 522 U.S. 3, 118 S.Ct. 275, 139 L. Ed. 2d 199, where in that case it was said that, "The doctrine of stare decisis reflects a policy judgment that in most matters it is more important that the applicable rule of law be settled than that it be settled right." On the contrary, Petitioner asserts that it is more important that the applicable rule of law be settled right than that it be just simply and expediently settled lest we introduce tyranny as a component to the rule of law.

The Petitioner, Don Hamrick, respectfully prays that his Petition for Writ of Certiorari be accepted on reason that the case has imperative public importance having certain constitutional questions that require immediate determination in the Supreme Court of the United States.



Don Hamrick
5860 Wilburn Road
Wilburn, AR 72179

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[22] 1 J. Story, *Commentaries on the Constitution of the United States* (Boston: 1833), 462. For a lengthy exegesis of the preamble phrase by phrase, see M. Adler & W. Gorman, *The American Testament* (New York: 1975), 63-118.

APPENDIX A: Order & Memorandum

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DON HAMRICK,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 02-1435(ESH)
[President] Bush, et al	)	
Respondents	)	
	)	

ORDER

Having considered Petitioner's Petition for Writ of Mandamus, A Writ of Prohibition, Declaratory Judgment, and Injunctive Relief, and for the reasons set out in the accompanying Memorandum, it is hereby

ORDERED that the Petition for Writ of Mandamus be **DENIED WITH PREJUDICE; and it is**

ORDERED that all other pending motions be **DISMISSED AS MOOT**.

SO ORDERED.

ELLEN SEGAL HUVELLE
United States District Judge

DATE: October 10, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DON HAMRICK,	)
Plaintiff,	)
	)
v.	) Civil Action
	) No. 02-1435(ESH)
[President] Bush, et al	)
Respondents	)
_____	)

MEMORANDUM

On July 18, 2002, petition filed a *pro se* Petition for A Writ of Mandamus, requesting this Court, *inter alia*, to compel the President of the United States to protect the constitutional rights of sailors in the U.S. Merchant Marine to carry handguns while ashore in the United States, to strike various federal statutes and regulations restricting individuals' right to transport firearms across state lines on the grounds that they violate the Second, Ninth, and Thirteenth Amendments of the U.S. Constitution, and to compel the U.S. Coast Guard to approve petitioner's application for "National Open Carry Handgun" endorsement on his Merchant Marine document. Petitioner has not served a complaint and summons on any of the parties he has named as respondents, seeking instead to use a petition-show cause order approach for the resolution of his grievances. Regardless of whether such an approach is appropriate in light of Rule 81(b) of the Federal Rules of Civil Procedure, it is clear that petitioner cannot satisfy the stringent standards for mandamus relief and therefore that his petition must be dismissed.

The remedy of mandamus is an extraordinary one, and is reserved for extraordinary situations. *See Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271, 289 (1988). Under well-established Circuit law, mandamus relief is available only if three conditions are met: (1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the plaintiff. *Power* v. *Barnhart*, 234 F.3d 1305, 1315 (D.C. Cir 2000)(mandamus issued "only for the most transparent violations of a clear duty to act"). The present petition falls far short of satisfying these stringent requirements.

The asserted legal bases for the relief sought by petitioner are the Second, Ninth, and Thirteenth Amendments of the Constitution, which, he claims, guarantee the right to carry firearms openly and without a license in interstate and intrastate travel. Petitioner argues that the Second Amendment's "right of the people to keep and bear arms" renders invalid any federal or state law restricting what he calls "National Open Carry Handgun" and requires the President and the Coast Guard to take the actions he has demanded. Moreover, according to petitioner, federal and state gun control laws create a form of "legislated slavery" in violation of the Thirteenth Amendment.

Taking the latter claim first, no court has ever so much as suggested that the Thirteenth Amendment confers any right to bear arms, and it is entirely fanciful to suggest that its prohibition of involuntary servitude somehow unambiguously requires the overturning of a whole variety of gun control legislation. As for the Second Amendment, while it is true that the precise meaning of this provision continues to be in dispute in both judicial and academic circles, *c.f. United States* v.

Emerson, 270 F.3d 203 (5th Cir. 2001), the very existence and intensity of that controversy make mandamus relief a decidedly inappropriate vehicle for fulfilling petitioner's demands. Mandamus is reserved for circumstances in which the claimant's entitlement to relief and the defendant's obligation to provide such relief are unambiguous and undebatable. The Second Amendment simply offers no such clarity.

Moreover, the established law on this subject hardly supports petitioner's cause. In *United States* v. *Miller,* 307 U.S. 174, 178 (1939), the Supreme Court found that "absent some reasonable relationship to the preservation or efficiency of a well regulated militia," the possession of a weapon (short-barreled shotgun) could be proscribed without running afoul of the Second Amendment. *Miller* remains the most authoritative modern pronouncement on the amendment's meaning and its conclusion that the right to bear arms is limited by the needs of an organized militia has subsequently been echoed by the Supreme Court and followed in this and other circuits. *See United States* v. *Lewis*, 445 U.S. 55, 65 n.8 (1980); *accord United States*, 264 F.3d 1161, 1165 (10th Cir. 2001)(holding that "a federal criminal gun control law does not violated the Second Amendment unless it impairs the state's ability to maintain a well-regulated militia"). Under this interpretation, petitioner's claims appear largely without merit.

In sum, given the breadth of petitioner's demands and the narrowness of the constitutional provision that he relies on to justify those demands – more specifically, the lack of apparent connection between his right to keep and bear an unlicenced firearm and the needs of any organized militia – petitioner can establish neither that he has a clear right to relief nor that any of the

named respondents has a clear duty to act. However the Second Amendment may ultimately come to be interpreted, the current understanding of that text certainly provides no obvious basis either for the wholesale negation of federal and state gun laws or for the open carry endorsement that petitioner seeks.

Since mandamus is clearly unavailable here, the Court must dismiss the petition with prejudice. Therefore, the Cour3t need not address petitioner's claims for declaratory judgment or for injunctive relief. But if petitioner wishes pursue these claims, he is required to use the ordinary procedures of complaint and summons described in Rules 3 and 4 of the Federal Rules of Civil Procedure. *See Flat* v. *Islamic Republic of Iran*, 2002 WL 31245261, at *2 (D.C. Cir. Oct. 8, 2002) ("The Federal Rules of Civil Procedure provide that there shall be one form of action to be known as 'civil action' and such an action shall be commenced by filing a complaint with the court, with related service, answer, and motions obligations thereafter.") (internal quotation marks omitted).

ELLEN SEGAL HUVELLE
United States District Judge

DATE: October 9, 2002

APPENDIX B: Proof of Docketing

General Docket
D.C. Circuit Court of Appeals

02-5334 02-5334

Court of Appeals Docket #: 02-5334 Filed: 10/28/02
Nsuit: 2440 Civil Rights: Other
Hamrick, Don v. Bush, George W., et al

Appeal from: U.S. District Court

Lower court information:

District: 0090-1 : 02cv01435 lead: 02cv01435
Trial Judge: Ellen Segal Huvelle, US Dist. Judge
Date Filed: 7/18/02
Date order/judgment: 10/10/02
Date NOA filed: 10/23/02

Fee status: paid

Prior case:
None
Current cases:
None

APPENDIX C: Order Denying Seaman's Fee Exemption

United States Court of Appeals

For The District of Columbia Circuit

No. 02-5334 September Term, 2002

02cv01435

Filed On: Feb. 3, 2003

Don Hamrick, Appellant

v.

[President] George W. Bush, Jr., et al,

Appellees

BEFORE: Randolph, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the court's order to show cause filed October 30, 2002; the motion for leave to appeal without payment of fees pursuant to 28 U.S.C. § 1916; the motion to invite amicus curiae briefs; the motion for rulings on motions dismissed as moot by the district court; the motion to substitute a party; the motion for publication; the motion for leave to file an appendix; the motion for the issuance of subpoenas; the motions for judicial notice of adjudicative facts and the supplement thereto; and the motion for leave to file a petition for a writ of certiorari, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motion for leave to appeal without payment of fees pursuant to 28 U.S.C. § 1916 be denied. Appellant has not demonstrated that his appeal is one for "wages or salvage or the enforcement of laws enacted for [his] health or safety" as a seaman. 28 U.S.C. § 1916. It is

FURTHER ORDERED on the court's own motion, that within 30 days of the date of this order, appellant must either pay the $100 appellate docketing fee and the $5.00 filing fee to the Clerk of the District Court, see Fed. R. App. P. 3(e); 28 U.S.C. § 1917, or file a motion in the District Court for leave to proceed on appeal in forma pauperis, see Fed. R. App. P. 24(a)(1). Failure to comply with this order will result in dismissal of the appeal for lack of prosecution. See D.C. Circuit Rule 38. It is

FURTHER ORDERED that consideration of the remaining motions be deferred pending further order of the court.

The Clerk is directed to send a copy of this order to appellant both by certified mail, return receipt requested, and by first class mail.

Per Curiam

[initials: ppn?]

[initials: unreadable]

[initials: unreadable]

APPENDIX D: Case Law In Rebuttal to Order Denying Right to Seaman's Suit Law of 28 U.S.C. § 1916

"The due process clause forbids arbitrary deprivations of liberty; where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the clause must be satisfied." *Goss* v. *Lopez*, 419 US 565, 95 S.Ct. 729, 42 L.Ed. 725. "When those fundamental rights which are recognized and declared, but not granted or created, by the Constitution, are thereby guaranteed only against violation or abridgment by the United States or by the states, and cannot therefore be affirmatively enforced by Congress against unlawful acts of individuals, yet every right created by, arising under, or dependent upon, the Constitution of the United States, may be protected and enforced by Congress by such means and in such manner as it may deem best." *Logan* v. *United States* 144 US 263, 12 S.Ct. 617, 36 L.Ed. 429. "If not warranted by any just occasion, the least imposition is oppressive." *Mountain Timber Co.* v. Washington, 243 US 219, 37 S.Ct. 260, 61 L.Ed. 685. "The constitutional guaranty of rights and immunities to the citizen insures to him the privilege of having those rights and immunities judicially declared and protected." *Lawrence* v. *State Tax Commission*, 286 US 276, 52 S.Ct. 556, 87 ALR 374, 76 L.Ed. 1102.

MOTION FOR JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(RULE 201 OF THE FEDERAL RULES EVIDENCE):

The U.S. District Court for the District of Columbia accepted petitioner's cases (1:02cv01434 & 1:02cv01435 filed July 18, 2002) as seaman's suits (28 U.S.C. § 1916) without the prepayment of filing fees, costs or

furnishing security therefor because the cases involved "the enforcement of laws enacted for safety" because they involve the right of personal security (i.e. safety) through the Second Amendment right to keep and bear arms.

HISTORICAL AND REVISION NOTES ON THE SEAMAN'S SUIT LAW (28 U.S.C. 1916)

June 12, 1917, ch. 27, Sec. 1, 40 Stat. 157 (H.R. 11; Pub.L.No. 21: An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes.) — *Provided further,* That courts of the United States shall be open to seamen, without furnishing bonds or prepayment of or making deposits to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for the own benefit for wages or salvage and to enforce laws made for their health and safety.

July 1, 1918, ch. 113, Sec. 1, 40 Stat. 683 (H.R. 12441; Pub.L.No. 181: An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirteenth, nineteen hundred and nineteen, and for other purposes.) — *Provided,* That courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety.

June 25, 1948, ch. 646, 62 Stat. 955 (H.R. 3214; Pub.L.No. 773: An Act: To revise, codify, and enact

into law title 28 of the United States Code entitled "Judicial Code and Judiciary") — 28 U.S. 1916: In all courts of the United Stats, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

NOTHING IN THE LEGISLATIVE HISTORY EVEN MENTIONS INDIGENCY OR IN FORMA PAUPERIS!

WHEN IS PROCESS DUE.[23]

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication."[24] "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."[25] Due process application, as has been noted, depends upon the nature of the interest;

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[23] *See* CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION 1735 (1992).

[24] *Goldberg* v. *Kelly*, 397 U.S. 254, 262–63 (1970), (quoting *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).

[25] Citing *Cafeteria & Restaurant Workers Union* v. *McElroy*, 367 U.S. 886, 894–95 (1961).

the form of the due process to be applied is determined by the weight of that interest balanced against the opposing interests. The currently prevailing standard is that formulated in Mathews v. Eldridge.[26] "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors:

> **first**, the private interest that will be affected by the official action;
>
> **second**, the risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and,
>
> **finally**, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail."

THE DOCTRINE OF PRIOR RESTRAINT[27]

"[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship."[28] "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against

---

[26] 424 U.S. 319, 335 (1976).

[27] *See* CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION 1029 (1992)

[28] *Near* v. *Minnesota* ex rel. *Olson*, 283 U.S. 697, 716 (1931).

its constitutional validity."[29] Government "thus carries a heavy burden of showing justification for the imposition of such a restraint."[30] Under the English licensing system, which expired in 1695, all printing presses and printers were licensed and nothing could be published without prior approval of the state or church authorities. The great struggle for liberty of the press was for the right to publish without a license that which for a long time could be published only with a license.[31]

RIGHT TO PETITION[32]

It is no longer confined to demands for "a redress of grievances," in any accurate meaning of these words, but comprehends demands for an exercise by the Government of its powers in furtherance of the interest and prosperity of the petitioners and of their views on politically contentious matters.[33] The right extends to the "approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of

---

[29] *Bantam Books* v. *Sullivan*, 372 U.S. 58, 70 (1963).

[30] Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971); New York Times Co. v. United States, 403 U.S. 713, 714 (1971).

[31] *Near* v. *Minnesota* ex rel. *Olson*, 283 U.S. 697, 713–14 (1931): Lovell v. Griffin, 303 U.S. 444, 451 (1938).

[32] *See* CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION 1188 (1992)

[33] See *Eastern R.R. Presidents Conf.* v. *Noerr Motor Freight*, 365 U.S. 127 (1961).

Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition."[34]

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[34] *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510 (1972). See also NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913–15 (1982); Missouri v. NOW, 620 F.2d 1301 (8th Cir.), cert. denied, 449 U.S. 842 (1980) (boycott of States not ratifying ERA may not be subjected to antitrust suits for economic losses because of its political nature).

APPENDIX E: Doctrine of Unconstitutional Conditions

DOCTRINE OF UNCONSTITUTIONAL CONDITIONS

It is most appropriate to include herein a brief discussion on the Doctrine of Unconstitutional Conditions as necessary to a full understanding of Appellant's cause of action. Appellant will excerpt portions from Kathleen M. Sullivan's, *Unconstitutional Conditions*, 10 Harv.L.Rev. 1413 (May 1989) that best describes Appellant's argument challenging the constitutionality of laws prohibiting National Open Carry Handgun and many other freedoms under the Bill of Rights associated with firearms possession, ownership, usage, and carriage for the purpose of personal security in dual-dependency relationship to the constitutional right to travel. The following are excerpts from Sullivan's law review (footnotes from original omitted):

> *Basic constitutional jurisprudence dictates that courts subject most government benefit decisions to minimal scrutiny, but scrutinize government actions that directly burden preferred liberties more closely. Unconstitutional conditions problems arise at the boundary between these two directives: when government conditions a benefit on the recipient's waiver of a preferred liberty, should courts review the conditioned benefit deferentially, as a benefit, or strictly, as a burden on a preferred liberty? . . . Professor Sullivan criticizes traditional analyses of unconstitutional conditions for focusing wrongly on whether conditions coerce individuals, distort legislative process, or permit alienation of constitutional rights. She articulates an alternative defense of close scrutiny, arguing that rights-pressuring*

conditions on government benefits skew distribution of power between government and rightholders, as well as among rightholders themselves. Professor Sullivan then develops this systemic approach, detailing both the circumstances in which courts should apply close scrutiny, and those in which government justifications may be strong enough to survive such scrutiny.[35]

The doctrine of unconstitutional conditions holds that government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold that benefit altogether. It reflects the triumph of the view that government may not do indirectly what it may not do directly over the view that the greater power to deny a benefit includes the lesser power to impose a condition on its receipt. (Id. at 1415)

[A]ssuming that some set of constitutionally preferred liberties has been agreed upon, and that burdens on those liberties require especially strong justification, unconstitutional conditions doctrine performs an important function. It identifies a characteristic technique by which government appears not to, but in fact does burden those liberties, triggering a demand for especially strong justification by the state. Part I of this Article defines the basic elements of the technique. (Id. at 1419)

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[35] Kathleen M. Sullivan, "*Unconstitutional Conditions*," 102 Harv.L.Rev. 1413 (May 1989), introduction. Italics in original.

The central challenge for a theory of unconstitutional conditions is to explain why conditions on government benefits that "indirectly" pressure preferred liberties should be as suspect as "direct" burdens on those same rights, such as the threat of criminal punishment. (Id. at 1419)

"IV. Unconstitutional Conditions as Commodification"

Unconstitutional conditions doctrine has a third possible theoretical explanation: that some constitutional rights are inalienable, and therefore may not be surrendered even through voluntary exchange. This approach identifies the harm in unconstitutional conditions as the commodification of rights the treatment of rights as transferable objects. (Id. at 1477)

1. Paternalism.

Making constitutional rights inalienable because citizens may undervalue the worth of those rights to themselves would be classic paternalism overruling individuals' choices for their own good. Individuals' choices may diverge from their "best" interests for many reasons: for example, because they underassess risk or under-value their long-term interests. Choices to waive constitutional rights are no exceptions; invalidating such choices, even if perfectly voluntary, compels citizens to hang onto their rights for their own good. (Id. at 1480)

. . . The very existence of constitutional rights, however, unlike consumer tastes or preferences, results from the prior "paternalistic" act of enacting a Constitution. The framers' decision to

place constitutional rights beyond majority decisionmaking reflects the prediction that citizens will undervalue those rights in the ordinary course of politics. Constitutional rights thus represent commitments by a constitutional majority to override the acts of future political majorities' political version of Ulysses and the Sirens. If the Constitution overrides the legislative choices of improvident future political majorities, why not the trading choices of improvident future individual rightholders? This approach would conceive unconstitutional conditions doctrine as a mere backstop to constitutionalism itself, which among other things, places rights beyond the reach of politics because citizens, if left to their own devices, will squander them. (Id. at 1480-81)

4. *Personhood*.

Another sort of argument defends inalienability not because it promotes efficiency or equality, but because some things ought not to be traded on markets at all. Such wholesale anti-commodification arguments rest on various theories. Some, for example, view market boundaries as essential to a distinction between the sacred and the profane. On such a view, reverence, mystery, and awe for something depend on its freedom from the pollution of trade. A second variant argues that noncommodification can help preserve social norms of altruism or donation. (Id. at 1484)

Such a "personhood" approach would hold that the opportunity to exchange rights for benefits wrongly commodifies rights. . . . Inalienability here would follow from the view that

constitutional rights, like body parts and love, but unlike clothes or mass-market consumer goods, are essential attributes of personal identity. The metaphor of constitutionally protected liberties as a "birthright" captures this view. Free transfer of such rights is a form of dismemberment. If citizens could purchase and sell constitutional rights, they would have a different and inferior conception both of those constitutional rights and of themselves. (Id. at 1485)

V. A Systemic Account of Unconstitutional Conditions

Neither coercion, corruption, nor commodification theories satisfactorily explain why conditions on benefits that pressure preferred liberties should receive the same strict scrutiny as "direct" constraints. . . . None of these three approaches suffices: coercion theory focuses too narrowly on the individual beneficiary, germaneness theory focuses wrongly on [the corruption of the] legislative process, and inalienability theory focuses too generally on problems with exchange. (Id. at 1489-90)

This Part argues for an alternative approach grounded in the systemic effects that conditions on benefits have on the exercise of constitutional rights. Such an approach starts from the proposition that the preferred constitutional liberties at stake in unconstitutional conditions cases do not simply protect individual rightholders piecemeal. Instead, they also help determine the overall distribution of power between government and rightholders generally, and among classes of rightholders. (Id. at 1490)

Unconstitutional conditions, no less than "direct" infringements, can skew this distribution in three ways.

First they can alter the constitutional liberties generally declare desirable some realm of autonomy that should remain free from government encroachment. Government freedom to redistribute power over presumptively autonomous decisions from the citizenry to itself through the leverage of permissible spending or regulation would jeopardize that realm. Second, an unconstitutional condition can skew the distribution of constitutional rights among rightholders because it necessarily discriminates facially between those who do and those who do not comply with the condition. If government has an obligation of evenhandedness or neutrality with regard to a right, this sort of redistribution is inappropriate. Third, to the extent that a condition discriminates de facto between those who do and do not depend on a government benefit, it can create an undesirable caste hierarchy in the enjoyment of constitutional rights. (Id. at 1490)

A. Constitutional Liberty as Distribution

A systemic approach to unconstitutional conditions problems recognizes that constitutional liberties regulate three relationships: the relationship between government and rightholders, horizontal relationships among classes of right holders, and vertical relationships among rightholders. . . . rights-pressuring conditions on government benefits potentially skew all three. (Id. at 1491)

Such an approach has important advantages over coercion, germaneness, and inalienability theories in illuminating unconstitutional conditions problems. Unlike coercion and unalienability theories, a systemic approach emphasizes the distinctive role of government: citizens' transactions with government require different analysis than interpersonal transactions, an analysis that focuses not on individuals but on the balance of power and freedom in the polity as a whole. (Id. at 1491)

APPENDIX F: USCG Notice on MMD Renewal

FEDERAL REGISTER
VOL. 68, NO. 34/THURSDAY, FEB. 20, 2003/NOTICES

DEPARTMENT OF TRANSPORTATION
Coast Guard
[USCG–2003–14500]

Merchant Mariners' Documents: Forms and Procedures for Renewals and Issuances

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: The Coast Guard suspended renewing and issuing Merchant Mariners' Documents (MMDs) using the previously issued form and has begun renewing and reissuing MMDs using a new form. The new MMD form is more tamper-resistant and facilitates verification of an MMD holder's identity, citizenship, and qualifications to work aboard U.S.-flagged vessels. MMDs in the new form will enhance maritime security.

DATES: The Coast Guard began renewing MMDs using the new form on February 3, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Donald J. Kerlin, Deputy Director, Coast Guard National Maritime Center (NMC), (202) 493–1006.

SUPPLEMENTARY INFORMATION:

Background

MMDs both serve as identity cards for merchant mariners and provide information about the mariners' professional qualifications. MMDs, in the previously issued form (CG–2838 [Rev. 7–94]), serve the second of

these purposes well enough; however, they no longer serve the first with sufficient confidence. The Coast Guard is replacing them using a new form (CG–2838 [Rev 09/02]) that will be issued through a more secure process. The Coast Guard will make every effort to effect a smooth and easy transition from the previously issued form to the new form. The Coast Guard will begin issuing MMDs in the new form to new applicants as soon as possible.

The Coast Guard also is considering whether to allow mariners to replace their previously issued MMDs with new MMDs on an accelerated basis, i.e.,' at an earlier date than current expiration date. To ensure that only eligible mariners receive MMDs, the Coast Guard will conduct a criminal-record review of mariners seeking renewal or re-issuance of a previously issued MMD, or issuance of an original MMD. The review may include verification of identities; criminal histories; and sobriety (as gauged from, among other sources, the National Drivers' Register). This review will be consistent with applicable law and Coast Guard regulations set forth in Title 46, Code of Federal Regulations (46 CFR 12.02–4). Because of the importance of establishing positive proof of identity to facilitate the background investigation, it will be necessary for holders of, and applicants for, an MMD to be present at a Regional Examination Center (REC) to be fingerprinted.

Mariners may encounter delays incident to the new processes' going into practice and the delays may persist for some weeks. Holders and new applicants seeking re-issuance, renewal, and original issuance of their MMDs should inquire at their nearest REC, a list of which appears at 46 CFR 12.01–7, or contact Mr. Donald Kerlin at the National Maritime Center, 4200

Wilson Boulevard, Suite 630, Arlington, VA 22203–1804, (202) 493–1006.

Authority

46 U.S.C. 7301, 7302, 7303, 7304, 7305, 7503, 7505, and 49 CFR 1.46. Dated: February 13, 2003.

Kevin J. Eldridge,

Rear Admiral, Coast Guard, Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 03–4145 Filed 2–19–03; 8:45 am]

BILLING CODE 4910–15–P

APPENDIX G: Proposed Merchant Marine Auxiliary Manual

Excerpts From Petitioner's Proposed Merchant Marine Manual, a Work in Progress Modeled after the Coast Guard Auxiliary Manual

1. The Need for an Armed Merchant Marine Auxiliary.

A. As part of Operation Noble Eagle, the Coast Guard is at a heightened state of alert protecting more than 361 ports and 95,000 miles of coastline, America's longest border. The Coast Guard continues to play an integral role in maintaining the operations of our ports and waterways by providing a secure environment in which mariners and the American people can safely go about the business of living and working freely.

B. On October 5, 1994, Public Law 103-337 (108 Stat. 3101) repealed the Federal Civil Defense Act of 1950 on the fact that the program lost its defense emphasis believing that the threat of attack was no longer the driving force behind the Civil Defense program, that the chief threats came from tornadoes, earthquakes, floods, chemical spills, and the like. The nation implemented a civilian disarmament course of gun control laws, spawned by the United Nations Department of Disarmament Affairs that left the United States vulnerable to the terrorist attacks of September 11, 2001. The nation was found negligent in its responsibility to protect and defend the Peoples inalienable right to provide for and participate in the Common Defense as stipulated in the Preamble to the U.S. Constitution and in the Preamble to the Bill of Rights.

C. There is a rediscovered need to rearm the law-abiding people of this nation to reinforce the nation's defenses against attacks from overt and clandestine enemies, whether foreign or domestic, to preserve the rights, freedoms, and duties of U.S. citizens and to maintain the balance of powers among the People, the States, and the Federal government. The safety and security of the United States relies upon an armed law-abiding People as the best means to its survival as a free nation.

1. The Merchant Marine Auxiliary.

A. The Merchant Marine Auxiliary acknowledges Justice Story's bifurcal approach to the Common Defense Clause of the Preamble to the U.S. Constitution. The Merchant Marine Auxiliary promotes the Common Defense through adoption of the Second Amendment Standard Model — the individual right of U.S. citizens and U.S. Merchant Seamen to keep and bear arms for the security of a free state clause of the Second Amendment and for their own personal security of the Thirteenth Amendment prohibition of slavery and involuntary servitude and further acknowledges the Preamble to the Bill of Rights expressing "a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution" in providing for the rights of U.S. citizens; and U.S. Merchant Seamen when they are not under the jurisdiction of maritime law; to provide for their own personal security and to participate in the common defense of their State and the United States.

B. The Merchant Marine Auxiliary is created under the authority of the militia clause of the Second

Amendment to the U.S. Constitution, and under the Coast Guard's general powers to execute duties and functions to maintain land and sea patrols under 14 U.S.C. § 93(c) to serve as:

(1) both an organized and unorganized naval militia under 10 U.S.C. § 311(b)(1) and 311(b)(2) respectively,

(2) a State Defense Force under 32 U.S.C. § 109(c),

(3) an organization to assist when called upon by civilian law enforcement under the Posse Comitatus Act in accordance with 18 U.S.C. § 1385 and 42 U.S.C. § 1989 and the proper separation of powers of the Tenth Amendment. "The Posse Comitatus Act expresses one of the clearest political traditions in Anglo-American history: that using military power to enforce the civilian law is harmful to both civilian and military interests. The authors of the [PCA] drew upon a melancholy history of military rule for evidence that even the best intentioned use of the Armed Forces to govern the civil population may lead to unfortunate consequences. They knew, moreover, that military involvement in civilian affairs consumed resources needed for national defense and drew the Armed Forces into political and legal quarrels that could only harm their ability to defend the country. Accordingly, they intended that the Armed Forces be used in law enforcement only in those serious cases to which the ordinary processes of civilian law were incapable of responding."[Posse Comitatus Act: Hearing Before the Subcommittee on Crime of the Committee on the Judiciary on H.R. 3519, 97th Cong., 1st Sess. at 16 (1981)(testimony of William H. Taft, Gen. Counsel, U.S. Dep't of Defense) (quoting an Aug. 6, 1979 report on the Posse Comitatus Act by the Departments of Justice and Defense). See also Washington University

Law Quarterly, The Posse Comitatus Act: A Principle in Need of Renewal, 75 Wash.L.Q. 953, (1997)], and

(4) the Second Amendment rights of U.S. citizens and U.S. Merchant Seaman who are not prohibited from owning or possessing firearms under 18 U.S.C. § 922 *et seq*. shall be duly recognized their right to lawfully openly keep and bear arms in interstate and intrastate travel.

2. Purpose.

A. Title 14, United States Code (U.S.C.) contains the laws of a general and permanent nature about the Coast Guard. The original 14 U.S.C. 902 stated:

"The purpose of the Merchant Marine Auxiliary is to assist the Coast Guard:

(1) to promote safety and security of seafarers and merchant marine facilities, and to provide a visible and effective deterrent to criminal activities and to deter the threat of terrorism in our nation's seaports and inland areas;

(2) to facilitate other operations of the Coast Guard and the Merchant Marine."

C. The Merchant Marine Auxiliary is a valuable resource to enhancing the safety and security of our nation's seaports and securing the interest of seafarers in the Coast Guard's port security program. Title 14, U.S.C. § 903 provides the Merchant Marine Auxiliary shall be composed of U.S. citizens who own motorboats, yachts, or radio stations, or who, because of training or experience, and who are not members of the Coast Guard Auxiliary, are deemed by the Commandant to be qualified for membership in the Merchant Marine Auxiliary. The statement accompanying this legislation indicated the respective roles contemplated for owners

of motorboats, yachts, or radio stations. The statement reflects the distinction which must exist between the preventive and remedial activities of the Coast Guard as the premier maritime Federal Government safety agency:

On the preventive side, the Coast Guard could better promote safety and security in our nation's seaports if it brings into a voluntary civilian organization persons interested in the safe secure operation of our seaports and adjoining communities.

3. Recent Legislation Affecting the Merchant Marine Auxiliary.

On_____, the Coast Guard Authorization Act of ____ (Public Law No. ___-___, ___ Stat. ____) was signed into law. This law was the first major legislation establishing the Merchant Marine Auxiliary. These addition of Part III to Title 14, U.S.C. establishes the Merchant Marine Auxiliary:

A. The purpose of the Merchant Marine Auxiliary is to assist the Coast Guard as authorized by the Commandant in performing any Coast Guard function, power, duty, role, mission, or operation authorized by law." In addition, the legislation expanded the Commandant's authority to use the Merchant Marine Auxiliary to assist other federal agencies, state authorities and local governments in areas other than safety and security of seafarers and merchant marine facilities. [14 U.S.C. 902]

B. Established an organizational structure for the Merchant Marine Auxiliary and authorized the Commandant to grant the organization and its officers such rights, privileges, powers and duties consistent with Title 14 and other applicable provisions of law. The Commandant is also specifically authorized to delegate

authority over the Merchant Marine Auxiliary to Merchant Marine Auxiliary officers to the extent considered necessary or appropriate for the functioning, organization and internal administration of the Merchant Marine Auxiliary. [14 U.S.C. 901(a)]

C. Each Merchant Marine Auxiliary organizational element and unit, when acting within the scope of assigned responsibilities, is deemed to be a U.S. instrumentality for certain matters related to non-contractual civil liability. While assigned to duty, Merchant Marine Auxiliarists are considered to be Federal employees for certain purposes. For example, a Merchant Marine Auxiliarist may be entitled to the same legal protection afforded other Coast Guard personnel in the event a third party sues the Merchant Marine Auxiliarist for claims allegedly arising from acts committed by the Merchant Marine Auxiliarist acting within the scope of assigned duties. [14 U.S.C. 903a(a)]

D. Clarified Merchant Marine Auxiliary vessels, while assigned to authorized Coast Guard duty, are deemed to be public vessels of the U.S. and Coast Guard vessels, qualified Merchant Marine Auxiliary pilots while assigned to duty are deemed to be Coast Guard pilots. All these provisions provide greater liability protection to Merchant Marine Auxiliary members while assigned to authorized Coast Guard duty. [14 U.S.C. 907 & 908]

E. Authorized the Merchant Marine Auxiliary National Board and the boards of any Merchant Marine Auxiliary district or region to form a corporation under state law in accordance with the policies established by the Commandant. These corporations are not deemed to be Federal instrumentalities. [14 U.S.C. 901(c)]

4. Role of the Merchant Marine Auxiliary.

The Coast Guard is a military service and is a member of the U.S. Armed Forces. However, the Coast Guard is also charged with many civil responsibilities in addition to its military missions.

A. The Merchant Marine Auxiliary is an element of the Coast Guard, which includes U.S. citizens of the Merchant Marine and Merchant Marine retirees, but does not include Coast Guard active duty or reserve, or Coast Guard civilian employees.

B. The Merchant Marine Auxiliary is specifically declared by statute to be a citizen-militia organization. This definition puts the Merchant Marine Auxiliary's role within a coordinated multi-jurisdictional relationship with the State and county governments and the Coast Guard's civil functions. The Merchant Marine Auxiliary's role does not extend to any Coast Guard military or direct law enforcement missions assigned to active or reserve forces but may extend, under State and County authority under 10 U.S.C. § 311(b)(1) and (2), or as a State Defense Force under 32 U.S.C. § 109(c), or as an organization to assist when called upon by civilian law enforcement under the Posse Comitatus Act in accordance with 18 U.S.C. § 1385 and 42 U.S.C. § 1989.

C. The Merchant Marine Auxiliary's role is further defined by the Commandant's administrative authority. The Commandant determines how the Merchant Marine Auxiliary may assist in performing Coast Guard civil missions. The Commandant prescribes Merchant Marine Auxiliary training and qualifications necessary to perform this assistance as well as regulating those activities.

D. The Merchant Marine Auxiliary's role and relationship to other Coast Guard elements are defined by statutory law and administrative regulation. Active

duty and reserve forces have exclusive responsibility for Coast Guard military missions. Active duty, civilian employees, reserve, and Merchant Marine Auxiliary members, as specifically directed by the Commandant, perform Coast Guard's civil missions.

MODEL LAW FOR

THE MERCHANT MARINE AUXILIARY

ADDING PART III TO TITLE 14 OF THE U.S. CODE

(First Draft - subject to review and revision)

TITLE 14. COAST GUARD
PART III. MERCHANT MARINE AUXILIARY
CHAPTER 30. MERCHANT MARINE AUXILIARY

14 U.S.C. § 901. Administration of the Merchant Marine Auxiliary

(a) The Merchant Marine Auxiliary is a State Defense Force under 32 U.S.C. § 109(c). A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces. The Commandant of the Coast Guard has general powers to execute his duties and functions to maintain land patrols of the Merchant Marine Auxiliary under 14 U.S.C. § 93(c); The Secretary of Transportation [or the Secretary of Homeland Security] has general superintendence over the Merchant Marine and the Merchant Marine Auxiliary of the United States and of Merchant Marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly

administer this subtitle. The Secretary may prescribe regulations to carry out the provisions of this subtitle.

(b) The Merchant Marine Auxiliary, in addition to being a State Defense Force under 32 U.S.C. § 109(c), is a class of the organized and unorganized militia under 10 U.S.C. § 311(b)(1) and § 311(b)(2) respectively.

(c) The Merchant Marine Auxiliary, in addition to subsections (a) and (b) above, is construed to be a Naval Militia under Title 10, Subtitle C, Chapter 659, et seq. and shall be augmented under 10 U.S.C. § 7854 with availability of material for a Naval Militia, i.e., the Merchant Marine Auxiliary.

(d) The Merchant Marine Auxiliary, shall serve and function, in addition to subparagraphs (a) through (c) above, as a posse comitatus under 18 U.S.C. § 1385 as an available option to local, state, and/or federal law enforcement (lest we see another Waco incident in the future). This authorization is required to restore the balance of power under the U.S. Constitution and the Tenth Amendment.

(d) The Merchant Marine Auxiliary, being a civilian organization, shall not be construed to disparage or deny its members or non-members of U.S. citizenship their rights under the Second Amendment and the Bill of Rights to be armed at all times in recognition of the duties of citizenship in the United States.

(e) The Merchant Marine Auxiliary is a nonmilitary organization administered by the Commandant under the direction of the Secretary [of Transportation or Homeland Security]. For command, control, and administrative purposes, the Auxiliary shall include such organizational elements and units as are approved by the Commandant, including but not limited to, a national board and staff (to be known as

the "Auxiliary headquarters unit"), districts, regions, divisions, and other organizational elements and units. The Auxiliary organization and its officers shall have such rights, privileges, powers, and duties as may be granted to them by the Commandant, consistent with this title and other applicable provisions of law. The Commandant may delegate to officers of the Auxiliary the authority vested in the Commandant by this section, in the manner and to the extent the Commandant considers necessary or appropriate for the functioning, organization, and internal administration of the Auxiliary.

(f) Each organizational element or unit of the Merchant Marine Auxiliary organization (but excluding any corporation formed by an organizational element or unit of the Auxiliary under subsection (c) of this section), shall, except when acting outside the scope of section 902, at all times be deemed to be an instrumentality of the United States, for purposes of the following:

(1) Chapter 26 [171] of title 28 (popularly known as the Federal Tort Claims Act).

(2) Section 2733 of title 10 (popularly known as the Military Claims Act).

(3) The Act of March 3, 1925 (46 App. U.S.C. 781-790; popularly known as the Public Vessels Act).

(4) The Act of March 9, 1920 (46 App. U.S.C. 741-752; popularly known as the Suits in Admiralty Act).

(5) The Act of June 19, 1948 (46 App. U.S.C. 740; popularly known as the Admiralty Extension Act).

(6) Other matters related to non-contractual civil liability.

(d) The national board of the Auxiliary, and any Auxiliary district or region, may form a corporation under State law in accordance with policies established by the Commandant.

(e) The flag of the U.S. Merchant Marine Auxiliary shall be one designed by the Institute of Heraldry.

14 U.S.C. § 902. Purpose of the Merchant Marine Auxiliary

The purpose of the Auxiliary is to assist the Merchant Marine as authorized by the Commandant, in performing any Merchant Marine function, power, duty, role, mission, or operation authorized by law.

14 U.S.C. § 903. Eligibility, enrollments

The Merchant Marine Auxiliary shall be composed of citizens of the United States and its territories and possessions, who are owners, sole or part, of motorboats, yachts, aircraft, or radio stations or who are documented and duly authorized to possess a current Merchant Mariner's Document or who by reason of their special training or experience are deemed by the Commandant to be qualified for duty in the Merchant Marine Auxiliary, and who may be enrolled therein pursuant to applicable regulations.

14 U.S.C. § 903a. Members of the Auxiliary; status

(a) Except as otherwise provided in this chapter [14 USCS §§ 901 et seq.], a member of the Merchant Marine Auxiliary shall not be considered to be a Federal employee and shall not be subject to the provisions of

law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, Federal employee benefits, ethics, conflicts of interest, and other similar criminal or civil statutes and regulations governing the conduct of Federal employees. However, nothing in this subsection shall constrain the Commandant from prescribing standards for the conduct and behavior of members of the Auxiliary.

(b) A member of the Merchant Marine Auxiliary while assigned to duty shall be deemed to be a Federal employee only for the purposes of the following:

(1) Chapter 26 [171] of title 28 (popularly known as the Federal Tort Claims Act).

(2) Section 2733 of title 10 (popularly known as the Military Claims Act).

(3) The Act of March 3, 1925 (46 App. U.S.C. 781-790; popularly known as the Public Vessels Act).

(4) The Act of March 9, 1920 (46 App. U.S.C. 741-752; popularly known as the Suits in Admiralty Act).

(5) The Act of June 19, 1948 (46 App. U.S.C. 740; popularly known as the Admiralty Extension Act).

(6) Other matters related to noncontractual civil liability.

(7) Compensation for work injuries under chapter 81 of title 5 [5 USCS §§ 8101 et seq.].

(8) The resolution of claims relating to damage to or loss of personal property of the member incident to service under the

Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 3721).

(c) A member of the Merchant Marine Auxiliary, while assigned to duty, shall be deemed to be a person acting under an officer of the United States or an agency thereof for purposes of section 1442(a)(1) of title 28.

(d) Nothing in this Part shall be construed to deny a duly documented U.S. Merchant Seaman in interstate or intrastate travel for any lawful purpose of commerce or tourism from transiting, entering or leaving facilities of seaports due to mere possession of a firearm whether or not a member of the Merchant Marine Auxiliary, notwithstanding violations of any other laws, past or present, subject to statute of limitations.

14 U.S.C. § 904. Disenrollment

Members of the Merchant Marine Auxiliary may be disenrolled pursuant to applicable regulations.

14 U.S.C. § 905. Membership in other organizations

Members of the Merchant Marine Auxiliary shall not be a bar to membership in any other naval or military organization.

14 U.S.C. § 906. Use of member's facilities

The Merchant Marine may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any motorboat, yacht, aircraft, or radio station placed at its disposition for any of such purposes by any member of the Merchant Marine Auxiliary, by any corporation, partnership, or

association, or by any State or political subdivision thereof.

14 U.S.C. § 907. Vessel deemed public vessel

While assigned to authorized Merchant Marine duty, any motorboat or yacht shall be deemed to be a public vessel of the United States and a vessel of the Merchant Marine within the meaning of sections 646 and 647 of this title and other applicable provisions of law.

14 U.S.C. § 908. Radio station deemed government station

Any radio station, while assigned to authorized Merchant Marine duty shall be deemed to be a radio station of the Merchant Marine and a "government station" within the meaning of section 305 of the Communications Act of 1934 (47 U.S.C. 305).

14 U.S.C. § 909. Availability of appropriations

(a) Appropriations of the Coast Guard shall be available for the payment of actual necessary traveling expense and subsistence, or commutation of ration allowance in lieu of subsistence, of members of the Auxiliary assigned to authorized duties and for actual necessary expenses of operation of any motorboat, yacht, aircraft, or radio station when assigned to Merchant Marine duty, but shall not be available for the payment of compensation for personal services, incident to such operation, other than to personnel of the Merchant Marine. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged motorboat, yacht, aircraft, or radio station and for the constructive or actual loss of any motorboat, yacht, aircraft, or radio station where it is determined,

under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such motorboat, yacht, aircraft, or radio station rests with the Merchant Marine.

(b) The Secretary may pay interest on a claim under this section in any case in which a payment authorized under this section is not made within 60 days after the submission of the claim in a manner prescribed by the Secretary. The rate of interest for purposes of this section shall be the annual rate established under section 6621 of the Internal Revenue Code of 1954.

14 U.S.C. § 910. Assignment and performance of duties

No member of the Merchant Marine Auxiliary, solely by reason of such membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Merchant Marine, except that any such member may, under applicable regulations, be assigned duties, which, after appropriate training and examination, he has been found competent to perform, to effectuate the purposes of the Merchant Marine Auxiliary. No member of the Merchant Marine Auxiliary shall be placed in charge of a motorboat, yacht, aircraft, or radio station assigned to Merchant Marine duty unless he has been specifically designated by authority of the Commandant to perform such duty. Members of the Merchant Marine Auxiliary, when assigned to duties as herein authorized shall, unless otherwise limited by the Commandant, be vested with the same power and authority, in the execution of such duties, as members of the regular Merchant Marine assigned to similar duty. When any member of the Auxiliary is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual

necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government, and no per diem shall be paid for any period while such member is performing duty on a vessel.

14 U.S.C. § 911. Injury or death in line of duty

When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any duty to which he has been assigned by competent Merchant Marine authority, such member or his beneficiary shall be entitled to the same benefits provided for temporary members of the Merchant Marine who suffer physical injury or death resulting from physical injury incurred incident to service. Members of the Auxiliary who incur physical injury or contract sickness or disease while performing any duty to which they have been assigned by competent Merchant Marine authority shall be entitled to the same hospital treatment afforded members of the Merchant Marine. The performance of a duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a member of the Auxiliary.

BRIEF HISTORY ON THE STATE DEFENSE FORCES
(32 U.S.C. 109 Maintenance of Other Troops)

On June 3, 1916 H.R. 12766 became Pub.L. 85 (Stat. 134) laying the foundation to add the proviso in 1940 that would become known as State Defense Forces in 1955.

On October 21, 1940 H.R. 10495 became Pub.L. 874 (54 Stat.904). It amended Section 61 of the National Defense Act of June 3, 1916 by adding a proviso which will permit States to organize military units not a part of the National Guard. This amendment was the birth of the State defense forces. Approved, October 21, 1940. 54 Stat. 904, Pub.L. 874 (H.R. 10495).

On August 18, 1941 S. 173 became Pub.L. 214 (55 Stat. 363). It amended Section 61 for the purpose of extending to Hawaii, Alaska, Puerto Rico, and the Canal Zone the permission to organize military units not a part of the National Guard which was granted to the States by the amendment made to such section by the Act of October 21, 1940.

On October 1, 1942 S. 2670 became Pub.L. 721 (56 Stat. 570). It amended Section 61 for the purpose of providing State and Territorial military forces with such arms, ammunition, clothing, and equipment as is deemed necessary to enable them to execute their internal security responsibilities within their respective States and Territories.

On June 26, 1944 S. 1157 became Pub.L. 356 (58 Stat. 279). It amended Section 61 for the purpose of providing such training of State and Territorial military forces as is deemed necessary to enable them to execute

their internal security responsibilities within their respective States and Territories.

On September 27, 1950 S. 4088 became Pub.L. 849 (64 Stat. 1058). It amended Section 61 to permit the States to organize military forces, other than as parts of their National Guard units, to serve while the National Guard is in active Federal Service.

On August 11, 1955 H.R. 7289 became Pub.L. 364 (69 Stat. 802). It amended Section 61 to authorize the States to organize and maintain State Defense Forces.

On September 2, 1958, H.R. 8943 became Pub.L. 85-861 (72 Stat. 1437, 1542). It amended Section 61 (32 U.S.C. § 109) removing "State defense forces" in subsections (a) and (b) and inserting "defense forces authorized by subsection (c)"; Section (c) read as, "In addition to its National Guard, if any, a State or Territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

BRIEF LEGAL HISTORY OF CIVIL DEFENSE
(50 U.S.C. § 2251 *et seq.*)

On January 12, 1951, H.R. 9798, The Federal Civil Defense Act of 1950, became Pub.L. 920 (64 Stat. 1228). It authorized a Federal civil defense program.

On August 8, 1958, H.R. 7576 became Pub.L. 85-606 (72 Stat. 532). It amended the Federal Civil Defense Act of 1950 adding the thermonuclear provisions.

On October 5, 1994, Pub.L. 103-337 (108 Stat. 3101) repealed the Federal Civil Defense Act of 1950.

In 5 U.S. Code Cong. And Adm. News 2182-2183 (1994) TITLE XXXIV CIVIL DEFENSE: Civil defense programs were originally designed to protect "life and property in the United States from attack." In 1981, the law was amended to permit states to use civil defense funds to prepare for natural disasters "in a manner that . . . . does not detract from attack-related civil defense preparedness."

Section 3402 of the National Defense Authorization Act for Fiscal Year 1994 (Pub.L. 103-160) eliminated this restriction. The Civil Defense Act now reflects the "all-hazard" approach to emergency management, i.e., states are permitted to use the funds for all kinds of emergencies and disasters.

The committee believes that it should get out of the civil defense business for two reasons. **First, the program has lost its defense emphasis. The threat of attack is no longer the driving force behind the program**. Rather, the chief threats today come from tornadoes, earthquakes, floods, chemical spills, and the like.

APPENDIX K: Anti-Militia Laws of the 24 States

ANTI-MILITIA LAWS OF THE 24 STATES[36]

1977: Idaho Code 46-802;
1984: N.D. Cent. Code 37-01-21;
1986: N.C. Gen. Stat. 127A-151 (Supp. 1996);
1987: Minn. Stat. 624.61;
1989: Ala. Code 31-2-125;
1990: Miss. Code Ann. 33-1-31;
1990: N.H. Rev. Stat. Ann. 111:15;
1990: N.Y. Mil. Law 240 (McKinney);
1990: Tex. Gov't Code Ann. 431.010;
1991: Ariz. Rev. Stat. Ann. 26-123 (West);
1991: Wash. Rev. Code 38.40.120;
1992: Ky. Rev. Stat. Ann. 38.440 (Banks-Baldwin);
1993: 20 Illinois Comp. Stat. 1805/94 (West);
1993: Mass. Gen. Laws ch. 33, 129-132 (West);
1994: Civil Defense Repealed (Pub. L. 103-337 (1994))
1994: Fla. Stat. ch. 870.06 ;
1994: Kan. Stat. Ann. 48-203;
1994: R.I. Gen. Laws 30-12-7;
1995: Ga. Code ann. 38-2-277 (Harrison);
1995: Iowa Code 29A.31;
1995: Md. Ann. Code, Militia 35;
1995: Nev. Rev. Stat. 203.080;
1995: W. Va. Code 15-1F-7;
1996: Me. Rev. Stat. Ann. tit. 37-B, 342.2 (West);
1996: Wyo. Stat. Ann. 19-1-106 (Michie).

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[36] Bowden, Ellen M. and Morris S. Dees, An Ounce of Prevention: The Constitutionality of State Anti-Militia Laws, 32 Gonzaga L.Rev. 523 (1996/1997), Footnote 12.

LISTING OF THE ANTI-MILITIA STATUTORY SOURCES FOR EACH STATE LAW[37]

STATES WITH BOTH ANTI-MILITIA AND ANTI-PARAMILITARY TRAINING LAWS (7)

Florida. FLA. STAT. ANN. ch. 870.06, 790.29.
Georgia. GA. CODE ANN. ss 38-2-277, 16-11-150 to -152.
Idaho. IDAHO CODE ss 46-802, 18-8101 to -8105.
Illinois. ILL. REV. STAT. ch. 1805, para. 94-95.
New York. N.Y. MIL. LAW s 240.
North Carolina. N.C. GEN. STAT. ss 127A-151, 14-288.20.
Rhode Island. R.I. GEN. LAWS ss 30-12-7, 11-55-1 to -3.

STATES WITH ANTI-MILITIA LAWS ONLY (17)

Alabama. ALA. CODE s 31-2-125.
Arizona. ARIZ. REV. STAT. ANN. s 26-123.
Iowa. IOWA CODE s 29A.31.
Kansas. KAN. STAT. ANN. s 48-203.
Kentucky. KY. REV. STAT. ANN. s 38.440.
Maine. ME. REV. STAT. ANN. tit. 37-B, s 342.2.
Maryland. MD. CODE ANN. art. 65, s 35.
Massachusetts. MASS. GEN. L. ch. 33, s 129-132.
Minnesota. MINN. STAT. s 624.61.
Mississippi. MISS. CODE ANN. $ 33-1-31.
Nevada. NEV. REV. STAT. s 203-080.
New Hampshire. N.H. REV. STAT. ANN. s 111:15.
North Dakota. N.D. CENT. CODE s 37-01-21.
Texas. TEX. GOV'T CODE ANN. s 431.010.

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[37] http://www.adl.org/mwd/faq5.htm; Anti-Defamation League. (List current as of September 1995)

Washington. WASH. REV. CODE s 38.40.120.
West Virginia. W. VA. CODE s 15-1F-7.
Wyoming. WYO. STAT. s 19-1-106.

STATES WITH ANTI-PARAMILITARY TRAINING LAWS ONLY (17)

Arkansas. ARK. CODE s 5-71-301 to -303.
California. CAL. PENAL CODE s 11460.
Colorado. COLO. REV. STAT. s 18-9-120.
Connecticut. CONN. GEN. STAT. s 53-206b.
Louisiana. LA. REV. STAT. ANN. s 117.1.
Michigan. MICH. COMP. LAWS s 750.528a.
Missouri. MO. REV. STAT. s 574.070.
Montana. MONT. CODE ANN. s 45-8-109.
Nebraska. NEB. REV. STAT. s 28-1480 to -1482.
New Jersey. N.J. REV. STAT. s 2C:39-14.
New Mexico. N.M. STAT. ANN. s 30-20A-1 to -4.
Oklahoma. OKLA. STAT. ANN. tit. 21, s 1321.10.
Oregon. OR. REV. STAT. s 166.660.
Pennsylvania. 18 PA. CONS. STAT. s 5515.
South Carolina. S.C. CODE ANN. s 16-8-10 to -30.

Tennessee. TENN. CODE ANN. s 39-17-314.
Virginia. VA. CODE ANN. s 18.2-433.1 to -433.3.

"Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate and systematical plan of reducing us to slavery."
Thomas Jefferson

"Bad laws are the worst sort of tyranny."
Edmund Burke, British parliamentarian, 1800

Southern Poverty Law Center is reputed to be a anti-gun, anti-freedom organization possessing disparaging views of the constitutional militia. Ellen M. Bowden, Staff Attorney of Southern Poverty Law Center (SPLC) and Morris S. Dees, Co-Founder & Chief Trial Counsel of the SPLC, conclude in their law review, An Ounce of Prevention: The Constitutionality of State Anti-Militia Laws:[38]

> *In an age increasingly populated by militia groups that train to commit violence, states should think seriously about using their anti-militia laws to shut down militias. States without these laws should enact them because they are the best route to prevent the violence that militias can cause. Further, states can be confident in enacting these laws because they pose no serious constitutional problems."*

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[38] 32 Gonzaga L.Rev. 523 (1996/1997)

APPENDIX L: Case Law on Insurrection

INSURRECTION (CASE LAW)

An insurrection has been defined as a rising against civil or political authority, but as something more than a mob or riot. *Allegheny County* v. *Gibson*, 90 Pa. 397 (1849). It is a rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in a city or a state. *In re Charge to Grand Jury*, 62 F. 828 (N.D. Ill. 1894). An insurrection may amount to a rebellion, at least, an incipient or limited rebellion. *Gitlow* v. *Kiely*, 44 F.2d 227 (S.D.N.Y. 1930), aff'd, 49 F.2d. 1077 (C.C.A. 2d Cir. 1931), cert. denied, 284 U.S. 648, 52 S. Ct. 29, 76 L. Ed. 550 (1931). However, the term "insurrection" usually implies less magnitude and success than there is in the case of a rebellion, and does not connote armed opposition or resistance. State ex rel. *Hamilton* v. *Martin*, 173 Wash. 249, 23 P.2d 1 (1933). It does, however, require persons acting in concert, *State* v. *Misner*, 410 N.W.2d 216 (Iowa 1987)(declined to follow by, *Hood* v. *State*, 334 Md. 52, 637 A.2d 1208, 45 A.L.R 5th 895 (1994)), meaning the making of a plan for, or seeking to bring about, some preconceived result. *State* v. *Wagner*, 410 N.W.2d 207 (Iowa 1987), appeal after remand, 484 N.W.2d 212 (Iowa Ct. App. 1992). Also, there must be an intent to overthrow a lawfully constituted regime. *Pan Am. World Airways, Inc.* v. *Aetna Cas. & Sur. Co.*, 505 F.2d 989 (2d Cir. 1974). While an insurrection against the government may culminate in a state of civil war, *The Army Warwick*, 67 U.S. 635, 17 L.Ed. 459 (1862) (in which it is said that a civil war always begins by insurrection), an insurrection does not constitute war in a legal sense prior to the recognition of the participants as belligerents by the existing domestic government or

by foreign nations, and is not attended by the incidents of war. *Leathers* v. *Commercial Ins. Co.*, 65 Ky. 296, 2 Bush 296 (1867); *Ex parte McDonald*, 49 Mont. 454, 143 P. 947 (1914). Thus until such recognition, insurgents have no standing in international law, and ordinary commercial intercourse and contracts between loyal citizens and insurgents are not affected. *Leathers* v. *Commercial Ins. Co.*, 65 Ky. 296, 2 Bush 296 (1867).

War is distinguished from insurrection and rebellion, as the latter terms describe open and active opposition of a number of citizens or subjects of a country or state to its government; thus neither insurrection nor rebellion constitutes war in a legal sense prior to the recognition of the participants as belligerents by the existing domestic governments or by foreign nations. 78 Am.Jur.2d, War 3. Those who join in an insurrection or rebellion of major proportions may, however, be recognized by the existing government as belligerents; and when the hostilities conducted attain such dimensions as to interfere with the exercise of the functions of the existing government and 8interrupt the regular course of justice, and particularly where the existing government's jurisdiction has been entirely suspended in some of the territorial districts, state of civil war exists, which is ordinarily accompanied by the incidents of an international war. 78 Am.Jur.2d, War 3. Nevertheless, the purported governmental acts of insurgents, where the movement is finally suppressed, are mere nullities and confer no legal rights. *Williams* v. *Bruffy*, 96 U.S. 176, 24 L.Ed. 716 (1877); *Cia. Minera Ygnacio Rodriquez Ramas, S.A.*, v. *Bartlesville Zinc Co.*, 115 Tex. 21, 275 S.W. 388, 41 A.L.R. 737 (1925).

Federal authorities may be used to suppress insurrection. *People* v. *Chambers*, 22 Cal.App.2d 687, 72 P.2d 746 (3d Dist. 1937). For example, Congress has the

constitutional power to provide for the calling forth the militia to suppress insurrection. U.S. Const. Art. I, 8 cl. 15. This power carries with it not only the right to use the requisite means, but also the authority to guard against the renewal of the conflict and to remedy the evils arising from it so far as that can be effected by appropriate legislation. *Raymon* v. *Thomas*, 91 U.S. 712, 23 L.Ed. 434 (1875); *White* v. *Hart*, 80 U.S. 646, 20 L.Ed. 685 (1871). Pursuant to this grant of power, Congress has enacted legislation providing for the punishment of persons engaged in, or inciting, insurrection or rebellion against the United States.18 U.S.C.A. § 2383.

The President is authorized by statute, upon the request of a state legislature or of its governor, but not of the District of Columbia, *U.S.* v. *Stewart*, 2 Hayw. & H. 280, 27 F.Cas. 1339, No. 16401a (D.C. Crim. Ct. 1857), to call the militia into federal service and to use such of the Armed Forces as the President considers necessary to suppress the insurrection. 10 U.S.C.A. § 331. The President is the judge of the necessity of calling the militia into service for this purpose, *Martin* v. *Mott*, 25 U.S. 10, 6 L.Ed. 537 (1827), and the President's decision as to which of two opposing governments is the lawful one cannot be questioned by the courts. *Luther* v. *Borden*, 48 U.S. 1, 7 How. 1, 12 L.Ed. 581 (1849) (distinguished by, *Powell* v. *McCormack*, 266 F.Supp. 354 (D.D.C. 1967)) and (distinguished by, *Oneida Indian Nation of New York* v. *State of N.Y.*, 520 F.Supp. 1278, 65 A.L.R.Fed. 606 (N.D.N.Y. 1981)). Further, the President's decision whether to use troops or militia in quelling a civil disorder is exclusively within the province of the President, and is not reviewable by the courts. *Monarch Ins. Co. of Ohio* v. *District of Columbia*, 353 F.Supp. 1249 (D.D.C. 1973), aff'd 497 F.2d 683 (D.C. Cir. 1974) . . .and (distinguished by, Hohri v. U.S. 586

F.Supp. 769 (D.D.C. 1984)) and (distinguished by, *Hohri* v. *U.S.*, 782 F.2d 227 (D.C.Cir. 1986)).

The President also has the authority and the responsibility to take such measures as he considers necessary, by using the militia, the Armed Forces, or by any other means, to suppress in any state any insurrection which so hinders the execution of the laws of that state and of the United States that any part or class of its people is deprived of a constitutional right secured by law which the state authorities are unable, fail, or refuse to protect, or which opposes or obstructs the execution of the laws of the United States or impedes the courts of justice under those laws. 10 U.S.C.A. § 333. However, whenever the President considers it necessary to use the militia or the Armed Forces to suppress insurrection, he must by proclamation immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time. 10 U.S.C.A. § 334. In the exercise of these powers, the question whether an insurrection exits rests solely in the determination of the President. *Consolidated Coal & Coke Co.* v. *Beale*, 282 F. 934 (S.D. Ohio 1922).

JUDICIAL INSURRECTION OVER THE SECOND AMENDMENT

On May 7, 2002 WASHINGTON, DC: President George W. Bush, through the Department of Justice, the Attorney General John Ashcroft, and the Solicitor General, Theodore B. Olson in filing their Court brief in the Emerson case reversed a long standing policy of the United States on the Second Amendment. The new official is contained in Footnote 3 to the U.S. Supreme Court Brief for the United States in Opposition to Timothy Joe Emerson v. United States on Petition for a

Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, No. 01-8780.

On May 15, 2002 DENVER, CO: Rick Stanley [Libertarian candidate of Denver for the U.S. Senate] appeared in court with defense attorney Paul Grant with Judge Patterson presiding. During this first day at trial illegal possession (openly wearing a handgun as a sidearm) of a handgun. In a display of "insurrection" against the United States Constitution the judge admonished defense counsel, "Then I'll explain it again. You are not to reference the Constitution in these proceedings. You will not address it in voir dire, you will not address it in your opening remarks, you will not ask any questions about the Constitution when you summon your witnesses, and you will not talk about the Constitution when you give your closing arguments. Do you understand my instructions?", questioned Judge Patterson."

David Bryant, who is the current Public Information Director for the Libertarian Party of Colorado, approached the city attorney to clarify his understanding of Judge Patterson's remarks when he ignored Defense's[39] argument based on a state Supreme Court ruling.

"As I understand it," stated Bryant, "Judge Patterson just said that because I live in Denver, the Bill of Rights, and the constitution of Colorado, Article II, do not protect any of my rights from the government of Denver. Is that your understanding also?" Bryant asked.

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The word "Defense" inserted in place of defense attorney's name. Paraphrased in parts.
www.stanley2002.org/release5_15_02b.htm
www.stanley2002.org/release5_16_02b.htm

"Is the city government free to deny all the rights secured to me by the Constitution of the United States, and the constitution of Colorado, so long as they only do it here, in Denver?"

Bryant questioned further. "Yes," said the city's attorney. "The Constitution has no force or effect in Denver, because this is a home rule city." . . . He stated that as things stood right now, the Constitution has no force or effect in this city, and it's been that way since 1906.

May 17, 2002 PHOENIX, AZ:[40] Even as a strong libertarian and political activist who had sued the state over more issues than he could remember, Ernest Hancock was never much bothered that his wife, Donna, was always told to check her gun or leave it in the car before paying her taxes at the Arizona Revenue Department. State law allows residents to carry concealed weapons, and building operators have the right to keep them out — a violation of constitutional rights, in Mr. Hancock's opinion. But it was not enough of an inconvenience to warrant another suit, he said.

That all changed last month, after Mrs. Hancock went to the department again, only to have security guards tell her that she now had to check her gun in a storage locker at the State Capitol, half a mile away.

Not a chance, said her husband, who then tested the system for himself and, like his wife, was turned away.

Reverting to form, Mr. Hancock drew up a complaint against the state, challenging all its restrictions on gun ownership. He headed straight for State Supreme Court,

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[40] The New York Times, Gun Owners Take Their Concerns to Court, by Michael Janofsky, May 17, 2002. Describing events in Arizona, Ohio, and Michigan

where the inconvenience this week became Case No. CV-02-0161-SA, the SA standing for special action.

May 21, 2002, SALT LAKE CITY, UT:[41] Setting up a classic separation-of-powers battle, a board representing Utah's 70 district judges has voted to ignore a new state law ordering all courthouses to install gun storage lockers for holders of concealed-weapon permits.

The Board of District Judges, representing the trial benches throughout Utah, announced Monday that its 10 elected leaders unanimously declined to install gun lockers, opting instead to continue a longtime policy of prohibiting the public from carrying guns in courthouses.

December 5, 2002, SAN FRANCISCO, CA:[42] *Silveira* v. *Lockyer*, No. 01-15098 (9th Cir., Dec. 5, 2002), opinion by Judge Reinhardt, is the latest in a recent serious of miscarriages of justice in Second Amendment jurisprudence advocating no individual rights to keep and bear arms. Judge Reinhardt commits a Freudian slip in citing from a January 14, 1990 issue of Parade Magazine interview with Chief Justice Warren E. Burger, The Right to Bear Arms, (p. 4):[43]

> *One of the greatest pieces of fraud, I repeat the word 'fraud,' on the American public by special interest groups that I've ever seen in*

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[41] The Salt Lake Tribune, Board Says 'No' to Guns in Courts, www.sltrib.com/05212002/utah/738687.htm

[42] Excerpted from Petitioner's Motion for Judicial Notice of Adjudicative Facts, et al, in his case pending at the Court of Appeals.

[43] Silveira, at 17-18.

my lifetime. The real purpose of the Second Amendment was to ensure that state armies the militia would be maintained for the defense of the state. The very language of the Second Amendment refutes any argument that it was intended to guarantee every citizen an unfettered right to any kind of weapon he or she desires.

CONGRESSIONAL INSURRECTION OVER THE SECOND AMENDMENT

Rep. Charles Pickering submitted Amendment No. 27 (H. AMDT. 424)[44] adding Subtitle C– Exemption of Communications Pertaining to the Second Amendment of the Constitution; Section. 221. "Findings" to Rep. Combest's Bipartisan Campaign Reform Act of 2001 (H.R. 2356) at 8:38pm on Feb. 13, 2002. That amendment contain major defensive measures for the Second Amendment's right to keep and bear arms. In the time of 46 minutes from submitting that amendment it was defeated in a recorded vote of 191-237 (Roll Call Vote no. 27). The Amendment stated in part:

Congress finds the following:

(1) The Second Amendment to the United States Constitution protects the right of individual persons to keep and bear arms.

(2) There are more than 60,000,000 gun owners in the United States.

(3) The Second Amendment to the Constitution of the United States protects the right of Americans

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[44] Cong. Rec. February 13, 2002 (House), Page H421, Bipartisan Campaign Reform Act of 2001 (H.R. 2356).

to carry firearms in defense of themselves and others.

(4) The United States Court of Appeals in U.S. v. Emerson reaffirmed the fact that the right to keep and bear arms is an individual right protected by the Constitution.

(5) Americans who are concerned about threats to their ability to keep and bear arms have the right to petition their government.

(6) The Supreme Court, in U.S. v. Cruikshank (92 U.S. 542, 1876) recognized that the right to arms preexisted the Constitution. The Court stated that the right to arms "is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.".

(7) In *Beard* v. *United States* (158 U.S. 550, 1895) the Court approved the common-law rule that a person "may repel force by force" in self-defense, and concluded that when attacked a person "was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force" as needed to prevent "great bodily injury or death". The laws of all 50 states, and the constitutions of most States, recognize the right to use armed force in self-defense.

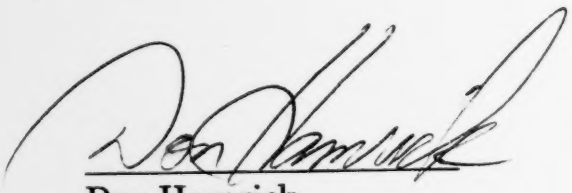
(8) In order to protect Americans' constitutional rights under the Second Amendment, the First Amendment provides the ability for citizens to address the Government.

(9) The First Amendment to the United States Constitution states that, "Congress shall make no

law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.".

CERTIFICATE OF COMPLIANCE

Petitioner hereby submits his Petition for Writ of Certiorari as compliant with Rule 33.1, being lawfully exempt from prepaying the filing fee under the contested Seaman's Suit law of 28 U.S.C. § 1916 but electing to pay the $300 filing fee while the case is pending review so that this Petition for Writ of Certiorari can proceed under Rule 10(a) without further delay due to its compelling cause of action.



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